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MONTANA CODE ANNOTATED
1993

CONTENTS

Volume 1

Preface

CONSTITUTION

Titles
1. General Laws and Definitions
2. Government Structure and Administration
3. Judiciary, Courts
4. Reserved
5. Legislative Branch
6. Reserved

Volume 2

Titles
7. Local Government
8 and 9. Reserved

Volume 3

Titles
10. Military Affairs and Disaster and Emergency Services
11 and 12. Reserved
13. Elections
14. Reserved
15. Taxation
16. Alcohol and Tobacco
17. State Finance
18. Public Contracts

Volume 4

Titles
19. Public Retirement Systems
20. Education
21. Reserved
22. Libraries, Arts, and Antiquities
23. Parks, Recreation, Sports, and Gambling
24. Reserved
25. Civil Procedure
26. Evidence

Volume 5

Titles
27. Civil Liability, Remedies, and Limitations
28. Contracts and Other Obligations
29. Reserved
30. Trade and Commerce
31. Credit Transactions and Relationships
32. Financial Institutions

Volume 6

Titles
33. Insurance and Insurance Companies
34. Reserved
35. Corporations, Partnerships, and Associations
36. Reserved

Volume 7

Titles
37. Professions and Occupations
38. Reserved
39. Labor
40. Family Law
41. Minors
42 and 43. Reserved

Volume 8

Titles
44. Law Enforcement
45. Crimes
46. Criminal Procedure
47 and 48. Reserved
49. Human Rights
50. Health and Safety
51. Reserved
52. Family Services
53. Social Services and Institutions
54-59. Reserved

Volume 9

Titles
60. Highways and Transportation
61. Motor Vehicles
62-66. Reserved
67. Aeronautics
68. Reserved
69. Public Utilities and Carriers
70. Property
71. Mortgages, Pledges, and Liens

Volume 10

Titles
72. Estates, Trusts, and Fiduciary Relationships
73 and 74. Reserved
75. Environmental Protection
76. Land Resources and Use
77. State Lands
78 and 79. Reserved

Volume 11

Titles
80. Agriculture
81. Livestock
82. Minerals, Oil, and Gas
83 and 84. Reserved
85. Water Use
86. Reserved
87. Fish and Wildlife
88 and 89. Reserved
90. Planning, Research, and Development
91-99. Reserved

INDEX

TITLE 37

PROFESSIONS AND OCCUPATIONS

Ch.
1. General Provisions.
2. General Provisions Relating to Health Care Practitioners.
3. Medicine.
4. Dentistry and Dental Hygiene.
5. Osteopathy.
6. Podiatry.
7. Pharmacy.
8. Nursing.
9. Nursing Home Administrators.
10. Optometry.
11. Physical Therapy.
12. Chiropractic.
13. Acupuncture Practice Act.
14. Radiologic Technologists.
15. Speech-Language Pathologists and Audiologists.
16. Hearing Aid Dispensers.
17. Psychologists.
18. Veterinary Medicine.
19. Morticians and Funeral Directors.
20. Physician Assistants-Certified.
21. Dietitians.
22. Social Work.
23. Professional Counseling.
24. Occupational Therapy.
25. Nutritionists.
26. Naturopathic Physicians.
27. Direct-Entry Midwifery.
28. Respiratory Care Practitioners.
29. Denturitry.
30. Barbers.
31. Cosmetology.
32. Electrology.
33. Massage Therapy. Repealed. Sec. 7, Ch. 84, L. 1983.
34. Clinical Laboratory Science Practitioners.

    Chapters 35 through 39 reserved.

40. Sanitarians.
41. Cesspool, Septic Tank, and Privy Cleaners.
42. Water Treatment Plant Operators.
43. Water Well Contractors.

    Chapters 44 through 46 reserved.

47. Outfitters and Guides.

    Chapters 48 and 49 reserved.

50. Public Accountants.
51. Real Estate Brokers and Salesmen.
52. Title Abstracters. Repealed. Sec. 195, Ch. 575, L. 1981.
53. Timeshare Sales.
54. Real Estate Appraisers.

    Chapters 55 through 59 reserved.

60. Private Investigators and Patrol Officers.
61. Attorneys at Law.
62. Polygraph Examiners.

    Chapters 63 and 64 reserved.

65. Architecture.
66. Landscape Architecture.

67. Engineers and Land Surveyors.
68. Electricians and Electrical Safety.
69. Plumbers.
70. Heating, Ventilation, Air Conditioning. Repealed. Sec. 195, Ch. 575, L. 1981.
71. Public Contractors.
72. Construction Blasting.
Chapters 73 and 74 reserved.
75. Direct-Entry Midwifery. Renumbered by Code Commissioner, 1991.

Title Cross-References

Licensing of athletics, boxing and wrestling matches, Title 23, ch. 3.

Licensing of horseracing, Title 23, ch. 4.

Licensing and registration of insurance producers, adjusters, consultants, and administrators, Title 33, ch. 17.

CHAPTER 1

GENERAL PROVISIONS

Part 1 — Duties and Authority of Department, Director, and Boards

37-1-101. Duties of department.
37-1-102. Renumbered 37-1-121 by Code Commissioner, 1981.
37-1-103. Renumbered 37-1-131 by Code Commissioner, 1981.
37-1-104. Standardized forms.
37-1-105. Reporting disciplinary actions against licensees.
37-1-106. Biennial report.
37-1-107 through 37-1-120 reserved.
37-1-121. Duties of director.
37-1-122 through 37-1-129 reserved.
37-1-130. Definition.
37-1-131. Duties of boards.
37-1-132. Nominees for appointment to licensing and regulatory boards.
37-1-133. Board members' compensation and expenses.
37-1-134. Licensing boards to establish fees commensurate with costs.
37-1-135. Licensing investigation and review — record access.
37-1-136. Disciplinary authority of boards — injunctions.
37-1-137. Grounds for disciplinary action as grounds for license denial — conditions to new licenses.
37-1-138 through 37-1-140 reserved.
37-1-141. Nonrenewal of license for three years — termination.

Part 2 — Licensure of Criminal Offenders

37-1-201. Purpose.
37-1-202. Intent and policy.
37-1-203. Conviction not a sole basis for denial.
37-1-204. Statement of reasons for denial.
37-1-205. Licensure on completion of supervision.

Chapter Cross-References

Horseracing, Title 23, ch. 4.

Gambling, Title 23, ch. 5.

Licensing of savings and loan agents, 32-2-409.

Licensing of outfitters and guides, Title 37, ch. 47.

Part 1
Duties and Authority of Department, Director, and Boards

Part Cross-References

Department and boards created, Title 2, ch. 15, part 18.

37-1-101. Duties of department. In addition to the provisions of 2-15-121, the department of commerce shall:

(1) provide all the administrative and clerical services needed by the boards within the department, including corresponding, taking applications for licenses, issuing licenses granted by the boards, renewing licenses, registering, taking minutes of board meetings and hearings, and filing;

(2) standardize and keep in Helena all official records of the boards;

(3) make arrangements and provide facilities in Helena for the meetings, hearings, and examinations of each board or elsewhere in the state if requested by the board;

(4) administer and grade examinations required by each board or by law for licensing, unless the board determines that experts or professionals are necessary to administer or grade a particular examination;

(5) at the request of a board, investigate complaints received by the department of illegal or unethical conduct of a member of the profession or occupation under the jurisdiction of a board within the department;

(6) assess the costs of the department to the boards on an equitable basis as determined by the department;

(7) adopt rules establishing expiration dates of licenses for barbers, barbershops, professional engineers, professional land surveyors, nursing home administrators, optometrists, plumbers, social workers, speech-language pathologists, audiologists, and radiologic technologists.

History: En. 82A-1603 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1603; amd. Sec. 1, Ch. 293, L. 1981; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 390, L. 1983; amd. Sec. 1, Ch. 307, L. 1985; amd. Sec. 42, Ch. 83, L. 1989; amd. Sec. 6, Ch. 413, L. 1989.

Cross-References

Allocation for administrative purposes only, 2-15-121.

Department's duties for Board of Horse-racing, 23-4-103.

37-1-102. Renumbered 37-1-121 by Code Commissioner, 1981.

37-1-103. Renumbered 37-1-131 by Code Commissioner, 1981.

37-1-104. Standardized forms. It is the responsibility of the department whenever possible to adopt standardized application, license, and other forms used by the boards within the department. The standardization is to reduce costs, waste, and the use of out-of-date forms and facilitate automated printing and computerization.

History: En. Sec. 2, Ch. 293, L. 1981.

37-1-105. Reporting disciplinary actions against licensees. The department has the authority and shall require that all licensing boards within the department require all applicants for licensure or renewal to report any legal or disciplinary actions against them which relate to the propriety of the applicants' practice of or their fitness to practice the profession or occupation for which they seek licensure. Failure to furnish the required information or the filing of false information is grounds for denial or revocation of a license.

History: **En. Sec. 3, Ch. 293, L. 1981.**

Cross-References

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-1-106. Biennial report. The department, in cooperation with each licensing board, shall prepare a biennial report. The biennial report of the department shall contain for each board a summary of the board's activities, the board's goals and objectives, a detailed breakdown of board revenues and expenditures, statistics illustrating board activities concerning licensing, summary of complaints received and their disposition, number of licenses revoked or suspended, legislative or court action affecting the board, and any other information the department or board considers relevant. The department shall submit the report to the office of budget and program planning as a part of the information required by 17-7-111.

History: **En. Sec. 4, Ch. 293, L. 1981; amd. Sec. 10, Ch. 125, L. 1983; amd. Sec. 32, Ch. 112, L. 1991; amd. Sec. 30, Ch. 349, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 349 in last sentence, after "shall", substituted "submit the report to the office of budget and program planning as a part of the information required by 17-7-111" for "provide a copy of the report to the governor and, as provided in 5-11-210, to the legislature".

37-1-107 through 37-1-120 reserved.

37-1-121. Duties of director. In addition to his powers and duties under 2-15-112 and 2-15-121, the director of commerce shall:

(1) at the request of a party, appoint impartial legal counsel to conduct hearings before each board within the department whenever any board holds a contested case hearing. The legal counsel appointed shall see that hearings are conducted in a proper and legal manner.

(2) whenever the department conducts an investigation of a complaint of illegal or unethical conduct of a member of a particular profession or occupation as prescribed in 37-1-101(5) and if requested by the appropriate board, appoint an impartial member of that profession or occupation to assist the department in its investigation. The member so appointed may not be a member of the board having jurisdiction over the particular profession or occupation.

(3) hire all personnel to perform the administrative and clerical functions of the department for the boards. Boards within the department have no authority to hire personnel.

(4) approve all contracts and expenditures by boards within the department. No board within the department may enter into a contract or expend funds without the approval of the director.

History: **En. 82A-1604 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 14, Ch. 533, L. 1977; R.C.M. 1947, 82A-1604; amd. Sec. 3, Ch. 274, L. 1981; Sec. 37-1-102, MCA 1979; redes. 37-1-121 by Code Commissioner, 1981; amd. Sec. 1, Ch. 165, L. 1985.**

Cross-References

Contested cases, Title 2, ch. 4, part 6.

Appointment and qualifications of department heads, 2-15-111.

Duties and powers of department heads, 2-15-112.

37-1-122 through 37-1-129 reserved.

37-1-130. Definition. As used in this part, "board" means each board in this title that regulates a profession or occupation and that is allocated to the department of commerce.

History: En. Sec. 5, Ch. 274, L. 1981.

37-1-131. Duties of boards. Each board within the department shall:

(1) set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within its jurisdiction;

(2) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within its jurisdiction. The hearings shall be conducted by legal counsel when required under 37-1-121(1).

(3) suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection (2), is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the workers' compensation system in violation of the provisions of Title 39, chapter 71 or 72;

(4) pay to the department its pro rata share of the assessed costs of the department under 37-1-101(6);

(5) consult with the department before the board initiates a program expansion, under existing legislation, to determine if the board has adequate money and appropriation authority to fully pay all costs associated with the proposed program expansion. The board may not expand a program if the board does not have adequate money and appropriation authority available.

History: En. 82A-1605 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 11, Ch. 250, L. 1973; R.C.M. 1947, 82A-1605(1) thru (3); amd. Sec. 3, Ch. 274, L. 1981; Sec. 37-1-103, MCA 1979; redes. 37-1-131 by Code Commissioner, 1981; amd. Sec. 2, Ch. 165, L. 1985; amd. Sec. 1, Ch. 90, L. 1991; amd. Sec. 10, Ch. 619, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 619 inserted (3) requiring board to suspend, revoke, or deny license for fraud or abuse of workers' compensation system. Amendment effective July 1, 1993.

Cross-References

"Rule" defined, 2-4-102.

Contested case as including licensing, 2-4-102, 2-4-631.

Allocation for administrative purposes only, 2-15-121.

37-1-132. Nominees for appointment to licensing and regulatory boards. Private associations and members of the public may submit to the governor lists of nominees for appointment to professional and occupational licensing and regulatory boards. The governor may consider nominees from the lists when making appointments to such boards.

History: En. Sec. 9, Ch. 244, L. 1981.

Cross-References

Appointing power, Art. VI, sec. 8, Mont. Const.

37-1-133. Board members' compensation and expenses. Unless otherwise provided by law, each member of a board allocated to the department is entitled to receive $50 per day compensation and travel expenses, as provided for in 2-18-501 through 2-18-503, for each day spent on official board business. Board members who conduct official board business in their city of residence are entitled to receive a midday meal allowance, as provided for in 2-18-502. Ex officio board members may not receive compensation but shall receive travel expenses.

History: En. Sec. 1, Ch. 474, L. 1981; amd. Sec. 2, Ch. 123, L. 1983; amd. Sec. 4, Ch. 672, L. 1983.

37-1-134. Licensing boards to establish fees commensurate with costs. All licensing boards allocated to the department shall set fees reasonably related to the respective program area costs. Unless otherwise provided by law, each board within the department may establish fees including but not limited to fees for program areas such as application, examination, renewal, reciprocity, late renewal, and continuing education. Board costs not related to a specific program area may be equitably distributed to program areas as determined by the board. Each board shall maintain records sufficient to support the fees charged for each program area.

History: En. Sec. 1, Ch. 345, L. 1981.

37-1-135. Licensing investigation and review — record access. Any person, firm, corporation, or association that performs background reviews, complaint investigations, or peer reviews pursuant to an agreement or contract with a state professional or occupational licensing board shall make available to the board and the legislative auditor, upon request, any and all records or other information gathered or compiled during the course of the background review, complaint investigation, or peer review.

History: En. Sec. 1, Ch. 242, L. 1981.

Cross-References

Procurement of services, Title 18, ch. 8.

37-1-136. Disciplinary authority of boards — injunctions. (1) Each licensing board allocated to the department has the authority, in addition to any other penalty or disciplinary action provided by law, to adopt rules specifying grounds for disciplinary action and rules providing for:

(a) revocation of a license;

(b) suspension of its judgment of revocation on terms and conditions determined by the board;

(c) suspension of the right to practice for a period not exceeding 1 year;

(d) placing a licensee on probation;

(e) reprimand or censure of a licensee; or

(f) taking any other action in relation to disciplining a licensee as the board in its discretion considers proper.

(2) Any disciplinary action by a board shall be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

(3) Notwithstanding any other provision of law, a board may maintain an action to enjoin a person from engaging in the practice of the occupation or profession regulated by the board until a license to practice is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court.

History: En. Sec. 1, Ch. 246, L. 1981.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Contested case procedure, Title 2, ch. 4, part 6.

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

37-1-137. Grounds for disciplinary action as grounds for license denial — conditions to new licenses. (1) Unless otherwise provided by law, grounds for disciplinary action by a board allocated to the department of commerce against a holder of an occupational or professional license may be, under appropriate circumstances, grounds for either issuance of a probationary license for a period not to exceed 1 year or denial of a license to an applicant.

(2) The denial of a license or the issuance of a probationary license under subsection (1) must be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

History: En. Sec. 1, Ch. 273, L. 1985.

37-1-138 through 37-1-140 reserved.

37-1-141. Nonrenewal of license for three years — termination. Unless otherwise provided by statute or rule, a lapsed occupational or professional license that is not renewed within 3 years of the most recent renewal date automatically terminates. The terminated license may not be reinstated, and a new original license must be obtained by passing a qualifying examination and paying the appropriate fee.

History: En. Sec. 1, Ch. 272, L. 1985.

Part 2

Licensure of Criminal Offenders

Part Cross-References

Rights of convicted, Art. II, sec. 28, Mont. Const.

Gambling qualifications for licensure, 23-5-176.

Building and loan agent's license revocable for violation of criminal statutes, 32-2-409.

No outfitter's license issued to criminal offender, 37-47-302.

Effect of conviction, 46-18-801.

37-1-201. Purpose. It is the public policy of the legislature of the state of Montana to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the assumption of the responsibilities of citizenship. The legislature finds that the public is best protected when such offenders are given the opportunity to secure employment or to engage in a meaningful occupation, while licensure must be conferred with prudence to protect the interests of the public.

History: En. 66-4001 by Sec. 1, Ch. 490, L. 1975; R.C.M. 1947, 66-4001.

37-1-202. Intent and policy. It is the intent of the legislature and the declared policy of the state that occupational licensure be granted or revoked as a police power of the state in its protection of the public health, safety, and welfare.

History: En. 66-4002 by Sec. 2, Ch. 490, L. 1975; R.C.M. 1947, 66-4002.

37-1-203. Conviction not a sole basis for denial. Criminal convictions shall not operate as an automatic bar to being licensed to enter any occupation in the state of Montana. No licensing authority shall refuse to license a person solely on the basis of a previous criminal conviction; provided, however, where a license applicant has been convicted of a criminal offense and such criminal offense relates to the public health, welfare, and safety as it applies to the occupation for which the license is sought, the licensing agency may, after investigation, find that the applicant so convicted has not been sufficiently rehabilitated as to warrant the public trust and deny the issuance of a license.

History: En. 66-4003 by Sec. 3, Ch. 490, L. 1975; R.C.M. 1947, 66-4003.

37-1-204. Statement of reasons for denial. When a licensing agency prohibits an applicant from being licensed wholly or partially on the basis of a criminal conviction, the agency shall state explicitly in writing the reasons for the decision.

History: En. 66-4004 by Sec. 4, Ch. 490, L. 1975; R.C.M. 1947, 66-4004.

Cross-References

Findings of fact required, 2-4-623.

Application of contested case procedure to licensing, 2-4-631.

37-1-205. Licensure on completion of supervision. Completion of probation or parole supervision without any subsequent criminal conviction shall be evidence of rehabilitation; provided, however, that the facts surrounding the situation that led to the probation or parole supervision may be considered as they relate to the occupation for which a license is sought and provided that nothing herein shall be construed to prohibit licensure of a person while he is under state supervision if the licensing agency finds insufficient evidence to preclude such licensure.

History: En. 66-4005 by Sec. 5, Ch. 490, L. 1975; R.C.M. 1947, 66-4005.

Cross-References

Supervision of probationers and parolees, Title 46, ch. 23, part 10.

CHAPTER 2

GENERAL PROVISIONS RELATING TO HEALTH CARE PRACTITIONERS

Part 1 — Dispensing of Drugs

37-2-101. Definitions.
37-2-102. Practices declared unlawful between drug companies and medical practitioners.
37-2-103. Practices declared unlawful between medical practitioners and pharmacies.
37-2-104. Dispensing of drugs by medical practitioners unlawful — exceptions.
37-2-105. Duty of county attorneys.
37-2-106. Existing ownership of pharmacy.
37-2-107 through 37-2-110 reserved.
37-2-111. Duty to report prescriptions issued to drug addicts.

Part 2 — Nonliability for Peer Review

37-2-201. Nonliability — evidential privilege — application to nonprofit corporations.

Part 3 — Miscellaneous Provisions

37-2-301. Duty to report cases of communicable disease.

37-2-302. Gunshot or stab wounds to be reported.
37-2-303. Immunity from liability.
37-2-304 through 37-2-310 reserved.
37-2-311. Report to department of justice by physician.
37-2-312. Physician's immunity from liability.

Part 1
Dispensing of Drugs

Part Cross-References
Pharmacy, Title 37, ch. 7.
Dangerous drugs, Title 45, ch. 9.
Model Drug Paraphernalia Act, Title 45, ch. 10.
Controlled substances, Title 50, ch. 32.

37-2-101. Definitions. As used in this part, the following definitions apply:

(1) "Community pharmacy", when used in relation to a medical practitioner, means a pharmacy situated within 10 miles of any place at which the medical practitioner maintains an office for professional practice.

(2) "Device" means any instrument, apparatus, or contrivance intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;

(b) to affect the structure or any function of the body of man.

(3) "Drug" means any article:

(a) recognized in the official United States Pharmacopoeia/National Formulary or in any supplement to the pharmacopoeia/formulary;

(b) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;

(c) intended to affect the structure or any function of the body of man;

(d) intended for use as a component of any article described in subsection (a), (b), or (c) of this subsection (3), but the term does not include any device or any components of a device.

(4) "Drug company" means any person engaged in the manufacturing, processing, packaging, or distribution of drugs; but the term does not include a pharmacy.

(5) "Medical practitioner" means any person licensed by the state of Montana to engage in the practice of medicine, dentistry, osteopathy, podiatry, optometry, or a nursing specialty as described in 37-8-202(5) and in the licensed practice to administer or prescribe drugs.

(6) "Person" means any individual and any partnership, firm, corporation, association, or other business entity.

(7) "Pharmacy" means an establishment which engages in the sale of drugs requiring a prescription.

(8) "State" means the state of Montana or any political subdivision thereof.

History: En. Sec. 1, Ch. 311, L. 1971; R.C.M. 1947, 27-901; amd. Sec. 2, Ch. 379, L. 1981; amd. Sec. 1, Ch. 588, L. 1987; amd. Sec. 43, Ch. 83, L. 1989; amd. Sec. 1, Ch. 444, L. 1989.

37-2-102. Practices declared unlawful between drug companies and medical practitioners. It shall be unlawful:

(1) for a drug company to give or sell to a medical practitioner any legal or beneficial interest in the company or in the income thereof with the intent or for the purpose of inducing such medical practitioner to prescribe to his patients the drugs of the company. The giving or selling of such interest by the company to a medical practitioner without such interest first having been publicly offered to the general public shall be prima facie evidence of such intent or purpose.

(2) for a medical practitioner to acquire or own a legal or beneficial interest in any drug company, provided it shall not be unlawful for a medical practitioner to acquire or own such an interest solely for investment; and the acquisition of an interest which is publicly offered to the general public shall be prima facie evidence of its acquisition solely for investment;

(3) for a medical practitioner to solicit or to knowingly receive from a drug company or for a drug company to pay or to promise to pay to a medical practitioner any rebate, refund, discount, commission, or other valuable consideration for, on account of, or based upon the volume of wholesale or retail sales, at any place, of drugs manufactured, processed, packaged, or distributed by the company.

History: En. Sec. 2, Ch. 311, L. 1971; R.C.M. 1947, 27-902.

37-2-103. Practices declared unlawful between medical practitioners and pharmacies. (1) It shall be unlawful for a medical practitioner to own, directly or indirectly, a community pharmacy. Nothing in this subsection shall prohibit a medical practitioner from dispensing a drug which he is permitted to dispense under 37-2-104.

(2) It shall be unlawful for a medical practitioner directly or indirectly to solicit or to knowingly receive from a community pharmacy or for a community pharmacy knowingly to pay or promise to pay to a medical practitioner any rebate, refund, discount, commission, or other valuable consideration for, on account of, or based upon income received or resulting from the sale or furnishing by such community pharmacy of drugs to patients of any medical practitioner.

History: En. Sec. 4, Ch. 311, L. 1971; R.C.M. 1947, 27-904.

37-2-104. Dispensing of drugs by medical practitioners unlawful — exceptions. (1) Except as otherwise provided by this section, it is unlawful for a medical practitioner to engage, directly or indirectly, in the dispensing of drugs.

(2) Nothing in this section prohibits:

(a) a medical practitioner from furnishing a patient any drug in an emergency;

(b) the administration of a unit dose of a drug to a patient by or under the supervision of a medical practitioner;

(c) dispensing a drug to a patient by a medical practitioner whenever there is no community pharmacy available to the patient;

(d) the dispensing of drugs occasionally, but not as a usual course of doing business, by a medical practitioner;

(e) a medical practitioner from dispensing drug samples;

(f) the dispensing of factory prepackaged oral contraceptives by a registered nurse employed by a family planning clinic under contract with the department of health and environmental sciences if the dispensing is in accordance with:

(i) a physician's written protocol specifying the circumstances under which dispensing is appropriate; and

(ii) the drug labeling, storage, and recordkeeping requirements of the board of pharmacy;

(g) a contract physician at an urban Indian clinic from dispensing drugs to qualified patients of the clinic. The clinic may not stock or dispense any dangerous drug, as defined in 50-32-101, or controlled substance. The contract physician may not delegate the authority to dispense any drug for which a prescription is required under 21 U.S.C. 353b.

History: En. Sec. 3, Ch. 311, L. 1971; R.C.M. 1947, 27-903; amd. Sec. 1, Ch. 22, L. 1979; amd. Sec. 1, Ch. 472, L. 1989; amd. Sec. 1, Ch. 445, L. 1991.

37-2-105. Duty of county attorneys. It shall be the duty of the county attorneys in the counties of the state, under the direction of the attorney general, to institute appropriate proceedings to prevent and restrain such violations. Such proceedings may be by way of complaint setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. Upon the filing of a complaint under this section and the service thereof upon the defendants named therein, the court shall proceed as soon as possible to the hearing and determination of the action.

History: En. Sec. 5, Ch. 311, L. 1971; R.C.M. 1947, 27-905.

Cross-References

Duty of Attorney General to supervise County Attorneys, 2-15-501.

Duties of County Attorneys generally, Title 7, ch. 4, part 27.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20).

Injunctions generally, Title 27, ch. 19.

37-2-106. Existing ownership of pharmacy. The provisions of 37-2-103(1) shall not apply to a medical practitioner as to any interest which he owns as set forth in said subsection on July 1, 1971, provided that transfer of this interest to another person shall result in immediate termination of such exemption.

History: En. Sec. 6, Ch. 311, L. 1971; R.C.M. 1947, 27-906.

Cross-References

Store license for pharmacy, 37-7-321.

37-2-107 through 37-2-110 reserved.

37-2-111. Duty to report prescriptions issued to drug addicts. (1) A physician duly licensed to practice medicine in Montana who prescribes for or dispenses, administers, or in any manner gives opium or coca leaves or any of their derivatives, salts, preparations, or compounds to a person known to him or believed by him to be an habitual user or a drug addict shall, within 48 hours, report the name, address, physical and mental condition, and any necessary substantial information regarding such person to the county attorney of the county in which that physician prescribes, dispenses, administers, or in any manner gives any of the drugs mentioned in this section.

(2) An "habitual user of drugs" or "drug addict" is defined as follows: a person who has needed or demanded the prescribing, dispensing, or administering or in any manner the giving of opium or coca leaves or any of their derivatives, salts, preparations, or compounds at more or less regular inter-

vals for 30 consecutive days prior to the day that person applies to a physician for the prescribing, dispensing, administering, or the giving in any way of any such drugs or their derivatives.

(3) If a physician prescribes for or dispenses, administers, or in any manner gives any of the drugs mentioned in this section daily for more than 30 days to a person, that physician shall register with the county attorney the name of such person, together with a statement of the physical and mental condition of such person and a prognosis as to the probable future necessity for continuing to prescribe for, dispense, administer, or give such drugs to such person, and the prognosis shall include an estimate as to the length of time which, according to the judgment of the physician, will be required to remove the necessity of administering the aforesaid narcotic drugs to such person.

(4) The county attorney shall, upon receipt of such notice, immediately file a complaint against such habitual user of drugs or drug addict in the district court of his county.

(5) A person violating any of the provisions of this section is guilty of a misdemeanor and upon conviction for each violation shall be sentenced to a term of imprisonment not to exceed 6 months in the county jail, a fine not to exceed $500, or both.

History: En. Sec. 6, Ch. 202, L. 1921; re-en. Sec. 3194, R.C.M. 1921; re-en. Sec. 3194, R.C.M. 1935; amd. Sec. 8, Ch. 101, L. 1977; R.C.M. 1947, 66-1516.

Cross-References

Duties of County Attorneys generally, Title 7, ch. 4, part 27.

Part 2

Nonliability for Peer Review

Part Cross-References

Licensing investigation and review — record access, 37-1-135.

Health care information, Title 50, ch. 16.

37-2-201. Nonliability — evidential privilege — application to nonprofit corporations. (1) No member of a utilization review or medical ethics review committee of a hospital or long-term care facility or of a professional utilization committee, peer review committee, medical ethics review committee, or professional standards review committee of a society composed of persons licensed to practice a health care profession is liable in damages to any person for any action taken or recommendation made within the scope of the functions of the committee if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to him after reasonable effort to obtain the facts of the matter for which the action is taken or a recommendation is made.

(2) The proceedings and records of professional utilization, peer review, medical ethics review, and professional standards review committees are not subject to discovery or introduction into evidence in any proceeding. However, information otherwise discoverable or admissible from an original source is not to be construed as immune from discovery or use in any proceeding merely because it was presented during proceedings before the committee, nor is a

member of the committee or other person appearing before it to be prevented from testifying as to matters within his knowledge, but he cannot be questioned about his testimony or other proceedings before the committee or about opinions or other actions of the committee or any member thereof.

(3) This section also applies to any member, agent, or employee of a nonprofit corporation engaged in performing the functions of a peer review, medical ethics review, or professional standards review committee.

History: En. 66-1052 by Sec. 1, Ch. 226, L. 1975; amd. Sec. 1, Ch. 267, L. 1977; R.C.M. 1947, 66-1052; amd. Sec. 2, Ch. 22, L. 1979; amd. Sec. 1, Ch. 380, L. 1989.

Cross-References

Libel and slander, Title 27, ch. 1, part 8.

Medical legal panel created, 27-6-104.

Reporting obligations of physicians, Title 37, ch. 3, part 4.

Part 3
Miscellaneous Provisions

Part Cross-References

Report of fetal death that occurs outside licensed medical facility, 46-4-114.

37-2-301. Duty to report cases of communicable disease. (1) If a physician or other practitioner of the healing arts examines or treats a person whom he believes has a communicable disease or a disease declared reportable by the department of health and environmental sciences, he shall immediately report the case to the local health officer. The report shall be in the form and contain information prescribed by the department.

(2) A person who violates the provisions of this section or rules adopted by the department under the provisions of this section is guilty of a misdemeanor. On conviction, he shall be fined not less than $10 or more than $500, imprisoned for not more than 90 days, or both. Each day of violation constitutes a separate offense. Fines, except those collected by a justice's court, shall be paid to the county treasurer of the county in which the violation occurs.

History: (1)En. Sec. 91, Ch. 197, L. 1967; Sec. 69-4514, R.C.M. 1947; (2)En. Sec. 96, Ch. 197, L. 1967; amd. Sec. 108, Ch. 349, L. 1974; amd. Sec. 3, Ch. 273, L. 1975; Sec. 69-4519, R.C.M. 1947; R.C.M. 1947, 69-4514, 69-4519(part); amd. Sec. 21, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

"Communicable disease" defined, 50-1-101.

Powers of Department relating to communicable diseases, 50-1-202.

Report of exposure to infectious disease, Title 50, ch. 16, part 7.

37-2-302. Gunshot or stab wounds to be reported. The physician, nurse, or other person licensed to practice a health care profession treating the victim of a gunshot wound or stabbing shall make a report to a law enforcement officer by the fastest possible means. Within 24 hours after initial treatment or first observation of the wound, a written report shall be submitted, including the name and address of the victim, if known, and shall be sent by regular mail.

History: En. 66-1050 by Sec. 1, Ch. 303, L. 1974; R.C.M. 1947, 66-1050.

37-2-303. Immunity from liability. A physician or other person reporting pursuant to 37-2-302 shall be presumed to be acting in good faith and in so doing shall be immune from any liability, civil or criminal, unless he acted in bad faith or with malicious purpose.

History: En. 66-1051 by Sec. 2, Ch. 303, L. 1974; R.C.M. 1947, 66-1051.

Cross-References

Libel and slander, Title 27, ch. 1, part 8.

37-2-304 through 37-2-310 reserved.

37-2-311. Report to department of justice by physician. (1) Any physician who diagnoses a physical or mental condition that, in the physician's judgment, will significantly impair a person's ability to safely operate a motor vehicle may voluntarily report the person's name and other information relevant to his condition to the department of justice. The department, upon receiving the report, shall require the person so reported to be examined or investigated as provided for in 61-5-207.

(2) (a) The physician's report may be introduced as evidence in any proceeding involving the granting, suspension, or revocation of the person's driver's license, driving privilege, or commercial driver's license before the department or a court.

(b) The physician's report may not be utilized in a criminal proceeding or in a civil proceeding, other than as provided in this subsection, without the consent of the patient.

History: En. Sec. 1, Ch. 126, L. 1983; amd. Sec. 1, Ch. 419, L. 1991.

Compiler's Comments

Code Commissioner Correction: In (2)(a) the Code Commissioner substituted "commercial driver's license" for "commercial motor vehicle operator's endorsement". Chapter 195 changed references in statutes from commercial motor vehicle operator's endorsement to commercial driver's license. The Code Commissioner has made the change in this section pursuant to the authority provided in sec. 84, Ch. 10, L. 1993.

Cross-References

Doctor-patient privilege, 26-1-805.

Revocation, suspension, or cancellation of driver's licenses, Title 61, ch. 5, part 2.

37-2-312. Physician's immunity from liability. Any physician reporting in good faith is immune from any liability, civil or criminal, that otherwise might result by reason of his actions pursuant to 37-2-311 except for damages occasioned by gross negligence. No action may be brought against a physician for not making a report pursuant to 37-2-311.

History: En. Sec. 2, Ch. 126, L. 1983.

Cross-References

Libel and slander, Title 27, ch. 1, part 8.

Report of exposure to infectious disease — immunity from liability, 50-16-704.

CHAPTER 3

MEDICINE

Part 1 — General

37-3-101. Purpose.
37-3-102. Definitions.
37-3-103. Exemptions from licensing requirements.

Part 2 — Board of Medical Examiners

37-3-201. Organization.

37-3-202. Policy.
37-3-203. Powers and duties.
37-3-204. Meetings.
37-3-205. Records.
37-3-206. Compensation and expenses of members.
37-3-207 through 37-3-210 reserved.
37-3-211. Executive secretary.

Part 3 — Licensing and Utilization Plans

37-3-301. License required — kinds of certificates.
37-3-302. Certificate to specify practice permitted.
37-3-303. Practice authorized by physician's certificate.
37-3-304. Practice authorized by temporary certificate.
37-3-305. Qualifications for licensure.
37-3-306. Physician's certificate — examination — reciprocity and endorsement.
37-3-307. Qualifications for licensure — temporary certificate.
37-3-308. Examination and application fees — further tax forbidden.
37-3-309. Application for license.
37-3-310. Notice of change of address or name — applicants — licensees.
37-3-311. Examination.
37-3-312. Issuance of license.
37-3-313. Annual registration fees — failure to pay — limiting authority to impose registration fees.
37-3-314. Deposit of money received.
37-3-315 through 37-3-320 reserved.
37-3-321. Refusal of license.
37-3-322. Unprofessional conduct.
37-3-323. Revocation or suspension of license — probation — fine — disposition of fine.
37-3-324. Reconsideration and review of actions of board.
37-3-325. Violations — penalties.
37-3-326. Injunctive relief — manner of charging violation.
37-3-327. Subpoena — fees.
37-3-328. Failure to appear or testify.

Part 4 — Reporting Obligations

37-3-401. Report of incompetence or unprofessional conduct.
37-3-402. Insurer to report to board.
37-3-403. Report of prohibition or limitation on practice by hospital.
37-3-404. Immunity of person providing information.
37-3-405. Suspension of license or privilege for failure to report.

Chapter Cross-References

Doctor-patient privilege, 26-1-805.

Limits on liability for emergency care rendered at scene of accident or emergency, 27-1-714.

Limits on liability of health care provider in emergency situations, 27-1-734.

Montana Medical Legal Panel Act, Title 27, ch. 6.

Professional service corporations, Title 35, ch. 4.

General provisions relating to health care practitioners, Title 37, ch. 2.

Limitations on dentistry and oral surgery practices involving general anesthesia, 37-4-511.

Regulation of prescriptions, Title 37, ch. 7, part 4.

Optometry laws not applicable to physicians and surgeons, 37-10-102.

Physicians' assistants, Title 37, ch. 20.

Validity of consent to medical treatment, Title 41, ch. 1, part 4.

Physicians to report child abuse, 41-3-201.

Hospitals and related facilities, Title 50, ch. 5.

Family practice residency training, Title 50, ch. 5, part 6.

Emergency medical services, Title 50, ch. 6.

Health care information, Title 50, ch. 16.

Montana Abortion Control Act, Title 50, ch. 20.

Part 1
General

Part Cross-References

Duty of physician, resident, and intern to report violation of Montana Elder Abuse Prevention Act, 52-3-811.

37-3-101. Purpose. It is hereby declared, as a matter of legislative policy in the state of Montana, that the practice of medicine within the state of Montana is a privilege granted by the legislative authority and is not a natural right of individuals and that it is deemed necessary, as a matter of such policy and in the interests of the health, happiness, safety, and welfare of the people of Montana, to provide laws and provisions covering the granting of that privilege and its subsequent use, control, and regulation to the end that the public shall be properly protected against unprofessional, improper, unauthorized, and unqualified practice of medicine and to license competent physicians to practice medicine and thereby provide for the health needs of the people of Montana.

History: En. Sec. 2, Ch. 338, L. 1969; R.C.M. 1947, 66-1011.

37-3-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) An "approved internship" is an internship training program of at least 1 year in a hospital which is either approved for intern training by the American osteopathic association or conforms to the minimum standards for intern training established by the council on medical education of the American medical association or successors. However, the board shall have the authority, upon investigation, to approve any other internship.

(2) An "approved residency" is a residency training program in a hospital conforming to the minimum standards for residency training established by the council on medical education of the American medical association or successors or approved for residency training by the American osteopathic association. However, the board shall have the authority upon investigation to approve any other residency.

(3) An "approved medical school" is a school which either is accredited by the American osteopathic association or conforms to the minimum education standards established by the council on medical education of the American medical association or successors for medical schools or is equivalent in the sound discretion of the board. The board may, on investigation of the education standards and facilities, approve any medical school, including foreign medical schools.

(4) "Board" means the Montana state board of medical examiners provided for in 2-15-1841.

(5) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(6) "Practice of medicine" means the diagnosis, treatment, or correction of or the attempt to or the holding of oneself out as being able to diagnose, treat, or correct human conditions, ailments, diseases, injuries, or infirmities, whether physical or mental, by any means, methods, devices, or instrumentalities. If a person who does not possess a license to practice medicine in this

state under this chapter and who is not exempt from the licensing requirements of this chapter performs acts constituting the practice of medicine, he is practicing medicine in violation of this chapter.

History: (1)En. Sec. 3, Ch. 338, L. 1969; amd. Sec. 1, Ch. 203, L. 1971; amd. Sec. 1, Ch. 97, L. 1974; amd. Sec. 91, Ch. 350, L. 1974; Sec. 66-1012, R.C.M. 1947; (2)En. Sec. 19, Ch. 338, L. 1969; amd. Sec. 5, Ch. 203, L. 1971; amd. Sec. 102, Ch. 350, L. 1974; Sec. 66-1028, R.C.M. 1947; (3)En. Sec. 20, Ch. 338, L. 1969; amd. Sec. 6, Ch. 203, L. 1971; Sec. 66-1029, R.C.M. 1947; (4)En. Sec. 21, Ch. 338, L. 1969; amd. Sec. 7, Ch. 203, L. 1971; Sec. 66-1030, R.C.M. 1947; R.C.M. 1947, 66-1012(1), 66-1028, 66-1029, 66-1030(part); amd. Sec. 3, Ch. 274, L. 1981.

37-3-103. Exemptions from licensing requirements. (1) This chapter does not prohibit or require a license with respect to any of the following acts:

(a) the gratuitous rendering of services in cases of emergency or catastrophe;

(b) the rendering of services in this state by a physician lawfully practicing medicine in another state or territory. However, if the physician does not limit the services to an occasional case or if he has any established or regularly used hospital connections in this state or maintains or is provided with, for his regular use, an office or other place for rendering the services, he must possess a license to practice medicine in this state.

(c) the practice of dentistry under the conditions and limitations defined by the laws of this state;

(d) the practice of podiatry under the conditions and limitations defined by the laws of this state;

(e) the practice of optometry under the conditions and limitations defined by the laws of this state;

(f) the practice of osteopathy under the conditions and limitations defined in chapter 5 of this title for those doctors of osteopathy who do not receive a physician's certificate under this chapter;

(g) the practice of chiropractic under the conditions and limitations defined by the laws of this state;

(h) the practice of Christian Science, with or without compensation, and ritual circumcisions by rabbis;

(i) the performance by commissioned medical officers of the armed forces of the United States, of the United States public health service, or of the United States department of veterans affairs of their lawful duties in this state as officers;

(j) the rendering of nursing services by registered or other nurses in the lawful discharge of their duties as nurses or of midwife services by registered nurse-midwives under the supervision of a licensed physician;

(k) the rendering of services by interns or resident physicians in a hospital or clinic in which they are training, subject to the conditions and limitations of this chapter. The board may require a resident physician to be licensed if he otherwise engages in the practice of medicine in the state of Montana.

(l) the rendering of services by a physical therapist, technician, or other paramedical specialist under the appropriate amount and type of supervision of a person licensed under the laws of this state to practice medicine, but this exemption does not extend the scope of a paramedical specialist;

(m) the rendering of services by a physician assistant-certified in accordance with Title 37, chapter 20;

(n) the practice by persons licensed under the laws of this state to practice a limited field of the healing arts, and not specifically designated, under the conditions and limitations defined by law;

(o) the execution of a death sentence pursuant to 46-19-103; and

(p) the practice of direct-entry midwifery. For the purpose of this section, the practice of direct-entry midwifery means the advising, attending, or assisting of a woman during pregnancy, labor, natural childbirth, or the postpartum period. Except as authorized in 37-27-302, a direct-entry midwife may not dispense or administer a prescription drug, as those terms are defined in 37-7-101.

(2) Licensees referred to in subsection (1) of this section who are licensed to practice a limited field of healing arts shall confine themselves to the field for which they are licensed or registered and to the scope of their respective licenses and, with the exception of those licensees who hold a medical degree, may not use the title "M.D." or any word or abbreviation to indicate or to induce others to believe that they are engaged in the diagnosis or treatment of persons afflicted with disease, injury, or defect of body or mind except to the extent and under the conditions expressly provided by the law under which they are licensed.

History: Ap. p. Sec. 3, Ch. 338, L. 1969; amd. Sec. 1, Ch. 203, L. 1971; amd. Sec. 1, Ch. 97, L. 1974; amd. Sec. 91, Ch. 350, L. 1974; Sec. 66-1012, R.C.M. 1947; Ap. p. Sec. 21, Ch. 338, L. 1969; amd. Sec. 7, Ch. 203, L. 1971; Sec. 66-1030, R.C.M. 1947; R.C.M. 1947, 66-1012(2), (3), 66-1030(part); amd. Sec. 7, Ch. 380, L. 1981; amd. Sec. 1, Ch. 411, L. 1983; amd. Sec. 8, Ch. 97, L. 1989; amd. Sec. 3, Ch. 493, L. 1989; amd. Sec. 25, Ch. 550, L. 1991.

Cross-References

Dentistry and dental hygiene, Title 37, ch. 4.

Osteopathy, Title 37, ch. 5.

Podiatry, Title 37, ch. 6.

Nursing, Title 37, ch. 8.

Optometry, Title 37, ch. 10.

Physical therapy, Title 37, ch. 11.

Chiropractic, Title 37, ch. 12.

Physician assistant-certified defined, 37-20-401.

Part 2

Board of Medical Examiners

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1841.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

Power to regulate acupuncture, Title 37, ch. 13, part 2.

37-3-201. Organization. The board shall, at the first meeting each year, elect from among its members a president, vice-president, and secretary. The board shall adopt a seal in which appear the words "The Board of Medical Examiners of Montana" and the further words "Official Seal", and acts, rules, orders, certificates, and licenses shall be authenticated by the seal.

History: En. Sec. 6, Ch. 338, L. 1969; amd. Sec. 93, Ch. 350, L. 1974; R.C.M. 1947, 66-1015.

Cross-References

Seal defined, 1-4-201.

Manner of making a seal, 1-4-202.

37-3-202. Policy. The board shall maintain reasonable and continuing supervision and surveillance over all licensees under this chapter to ensure that such licensees maintain standards of conduct and exercise the privileges granted hereunder in the greatest public interest and to carry out the purposes and provisions of this chapter.

History: En. Sec. 7, Ch. 338, L. 1969; R.C.M. 1947, 66-1016.

37-3-203. Powers and duties. The board may:

(1) adopt rules necessary or proper to carry out parts 1 through 3 of this chapter; the rules must be fair, impartial, and nondiscriminatory;

(2) hold hearings and take evidence in matters relating to the exercise and performance of the powers and duties vested in the board;

(3) aid the county attorneys of this state in the enforcement of parts 1 through 3 of this chapter and the prosecution of persons, firms, associations, or corporations charged with violations of parts 1 through 3 of this chapter;

(4) establish a program to assist and rehabilitate licensed physicians who are found to be physically or mentally impaired by habitual intemperance or the excessive use of addictive drugs, alcohol, or any other drug or substance or by mental or chronic physical illness;

(5) select an executive secretary to be hired by the department to:

(a) provide services to the board in connection with the board's duties under this chapter;

(b) assist in prosecution and matters of license discipline under this chapter; and

(c) administer the board's affairs; and

(6) fund additional staff, hired by the department, to administer the provisions of this chapter, by increasing license fees as necessary.

History: En. Sec. 8, Ch. 338, L. 1969; amd. Sec. 94, Ch. 350, L. 1974; R.C.M. 1947, 66-1017; amd. Sec. 1, Ch. 83, L. 1981; amd. Sec. 1, Ch. 283, L. 1987; amd. Sec. 1, Ch. 135, L. 1989; amd. Sec. 1, Ch. 436, L. 1991; amd. Sec. 2, Ch. 419, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 419 in (4), before "drugs", substituted "addictive" for "narcotic" and at end inserted reference to mental or chronic physical illness; and made minor changes in style. Amendment effective April 20, 1993.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Duties of boards, 37-1-131.

Effect of chemical dependency, 37-3-322, 37-3-323.

Habitual intemperance or excessive use of narcotic drugs defined as unprofessional conduct, 37-3-322.

Approval of class for optometric use of drugs, 37-10-304.

Transfer of funds derived from licensure of physical therapists, 37-11-203.

37-3-204. Meetings. The board shall hold meetings for examinations and for other business properly before the board at least twice annually at times and places set by the board. The president of the board may call special meetings he considers advisable or necessary. Four members of the board constitute a quorum.

History: En. Sec. 9, Ch. 338, L. 1969; amd. Sec. 95, Ch. 350, L. 1974; R.C.M. 1947, 66-1018.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Duty of Department to provide facilities, 37-1-101.

Board members' compensation and expenses, 37-1-133.

Disrupting meeting as disorderly conduct, 45-8-101.

37-3-205. Records. The department shall keep a record of the board's proceedings and also records of applicants for certificates and a register of licenses. The register is prima facie evidence of the matters contained in it.

History: En. Sec. 10, Ch. 338, L. 1969; amd. Sec. 96, Ch. 350, L. 1974; R.C.M. 1947, 66-1019.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records, Title 2, ch. 6.

Preservation of records, Title 22, ch. 3, part 2.

Duty of Department to keep records, 37-1-101.

Licensing investigation and review — access to records, 37-1-135.

37-3-206. Compensation and expenses of members. Each member of the board of medical examiners shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 11, Ch. 338, L. 1969; amd. Sec. 1, Ch. 165, L. 1974; amd. Sec. 97, Ch. 350, L. 1974; amd. Sec. 30, Ch. 439, L. 1975; R.C.M. 1947, 66-1020; amd. Sec. 7, Ch. 474, L. 1981.

37-3-207 through 37-3-210 reserved.

37-3-211. Executive secretary. To perform the services provided for in 37-3-203(5), the department shall hire a person selected by the board who:

(1) is a citizen of the United States;

(2) is of good moral character; and

(3) holds at least a postgraduate degree from an accredited college or university or has equivalent experience. The degree or experience need not be in the field of medicine.

History: En. Sec. 2, Ch. 135, L. 1989.

Part 3

Licensing and Utilization Plans

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-3-301. License required — kinds of certificates. (1) Prior to the issuance of a license, an applicant may not engage in the practice of medicine in this state.

(2) The department may issue two forms of certificates under the board's seal: the physician's certificate and the temporary certificate. The physician's certificate shall be signed by the president, but the temporary certificate may be signed by any board member. The board shall decide which certificate to issue. These certificates shall be designated as:

(a) physician's certificate, which is subject to annual registration;

(b) temporary certificate, which is subject to specifications and limitations imposed by the board.

History: **(1)En. Sec. 25, Ch. 338, L. 1969; amd. Sec. 105, Ch. 350, L. 1974; Sec. 66-1034, R.C.M. 1947; (2)En. Sec. 12, Ch. 338, L. 1969; amd. Sec. 98, Ch. 350, L. 1974; Sec. 66-1021, R.C.M. 1947; R.C.M. 1947, 66-1021, 66-1034(part).**

37-3-302. Certificate to specify practice permitted. The certificates issued shall state the extent and character of the practice that is permitted and shall be in the form prescribed by the board. Neither the privileges granted to nor the obligations imposed upon licensees may be altered except by legislative enactment or by action of the board duly authorized hereunder.

History: **En. Sec. 13, Ch. 338, L. 1969; R.C.M. 1947, 66-1022.**

37-3-303. Practice authorized by physician's certificate. The physician's certificate authorizes the holder to perform one or more of the acts embraced in 37-3-102(6) in a manner reasonably consistent with his training, skill, and experience.

History: **En. Sec. 14, Ch. 338, L. 1969; amd. Sec. 3, Ch. 203, L. 1971; R.C.M. 1947, 66-1023; amd. Sec. 1, Ch. 323, L. 1979.**

37-3-304. Practice authorized by temporary certificate. The temporary certificate, which may be issued to any citizen or to an alien otherwise qualified for a physician's certificate and which may be issued for a period not to exceed 1 year, subject to renewal for additional periods of 1 year but not to exceed five such renewals, at the discretion of the board, authorizes the holder to perform one or more of the acts embraced in 37-3-102(6) in a manner reasonably consistent with his training, skill, and experience, subject, nevertheless, to all specifications, conditions, and limitations imposed by the board.

History: **En. Sec. 15, Ch. 338, L. 1969; R.C.M. 1947, 66-1024.**

37-3-305. Qualifications for licensure. (1) A person may not be granted a physician's license to practice medicine in this state unless the person:

(a) is of good moral character, as determined by the board;

(b) is a graduate of an approved medical school as defined in 37-3-102;

(c) has completed an approved internship of at least 1 year or, in the opinion of the board, has had experience or training that is at least the equivalent of 1 year internship;

(d) has had a completed application file reviewed by a board member and, at the discretion of the board member, has made a personal appearance before the board; and

(e) is able to communicate, in the opinion of the board, in the English language.

(2) The board may authorize the department to issue the license subject to terms of probation or other conditions or limitations set by the board or may refuse a license if the applicant has committed unprofessional conduct or is otherwise unqualified.

(3) A person may not be granted a temporary license to practice medicine in this state unless the person:

(a) is of good moral character, as determined by the board;

(b) is a graduate of an approved medical school as defined in 37-3-102;

(c) has completed an approved internship of at least 1 year or, in the opinion of the board, has had experience or training that is at least the equivalent of 1 year internship;

(d) has made a personal appearance before at least one member of the board; and

(e) is able, in the opinion of the board, to communicate in the English language.

History: En. Sec. 18, Ch. 338, L. 1969; amd. Sec. 3, Ch. 168, L. 1971; amd. Sec. 101, Ch. 350, L. 1974; amd. Sec. 1, Ch. 213, L. 1977; R.C.M. 1947, 66-1027(1), (2); amd. Sec. 2, Ch. 323, L. 1979; amd. Sec. 3, Ch. 419, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 419 in (1) substituted "license" for "certificate"; in (1)(d), at beginning, inserted reference to file review by Board member and personal appearance at discretion of Board member and at end, after "before the board", deleted "unless such appearance has been specifically waived by the board"; and made minor changes in style. Amendment effective April 20, 1993.

Cross-References

Licensing investigation and review — record access, 37-1-135.

37-3-306. Physician's certificate — examination — reciprocity and endorsement. (1) The board may authorize the department to issue to an applicant a physician's certificate, certificate by reciprocity, or certificate by endorsement only on the basis of:

(a) passing an examination given and graded by the department, subject to 37-1-101;

(b) certification of record or other certificate of examination issued to or for the applicant by the national board of medical examiners or successors, by the federation licensing examination committee or successors, by the national board of examiners for osteopathic physicians and surgeons, incorporated, or by the medical council of Canada or successors if the applicant is a graduate of a Canadian medical school which has been approved by the medical council of Canada or successors, certifying that the applicant has passed an examination given by this board; or

(c) a valid, unsuspended, and unrevoked license or certificate issued to the applicant on the basis of an examination by an examining board under the laws of another state or territory of the United States or of the District of Columbia or of a foreign country whose licensing standards at the time the license or certificate was issued were, in the judgment of the board, essentially equivalent to those of this state for granting a license to practice medicine, if under the scope of the license or certificate the applicant was authorized to practice medicine in the other state, territory, or country.

(2) No applicant who applies for a license on the basis of an examination and fails the examination may be granted a license based on credentials from another state, territory, or foreign country or on a certificate issued by the national board of medical examiners or successors, by the federation licensing examination committee or successors, or by the medical council of Canada or successors.

(3) The board may adopt reciprocity or endorsement requirements current with changes in standards in the practice of medicine.

(4) The board may, in the case of an applicant for admission by reciprocity or endorsement, require a written or oral examination of the applicant.

(5) The board may require that graduates of foreign medical schools pass an examination given by the education council for foreign medical graduates or successors.

(6) Holders of the degree of doctor of osteopathy granted in 1955 or before will be certified only on the basis of taking and passing the examination given by the department, subject to 37-1-101. Holders of the degree of doctor of osteopathy granted after 1955 will be certified in the same manner as provided above for physicians.

History: En. Sec. 16, Ch. 338, L. 1969; amd. Sec. 4, Ch. 203, L. 1971; amd. Sec. 1, Ch. 403, L. 1973; amd. Sec. 2, Ch. 166, L. 1974; amd. Sec. 99, Ch. 350, L. 1974; R.C.M. 1947, 66-1025; amd. Sec. 1, Ch. 438, L. 1979.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Licensing of doctors of osteopathy, Title 37, ch. 5, part 3.

37-3-307. Qualifications for licensure — temporary certificate. (1) The board may authorize the department to issue to an applicant a temporary certificate to practice medicine on the basis of:

(a) passing an examination given and graded by the department, subject to 37-1-101;

(b) certification of record or other certificate of examination issued to or for the applicant by the national board of medical examiners or successors, by the federation licensing examination committee or successors, or by the medical council of Canada or successors if the applicant is a graduate of a Canadian medical school which has been approved by the medical council of Canada or successors, certifying that the applicant has passed an examination given by the board; or

(c) a valid, unsuspended, and unrevoked license or certificate issued to the applicant on the basis of an examination by an examining board under the laws of another state or territory of the United States or of the District of Columbia or of a foreign country whose licensing standards at the time the license or certificate was issued were essentially equivalent, in the judgment of the board, to those of this state at the time for granting a license to practice medicine; and

(d) being a graduate of an approved medical school who has completed 1 year of internship or its equivalent and being of good moral character and good conduct.

(2) The board may require that graduates of foreign medical schools pass the examination given by the education council for foreign medical graduates or successors.

(3) A temporary license may be issued to a physician employed by a public institution who is practicing under the direction of a licensed physician. The board may authorize the department to issue a temporary license subject to terms of probation or other conditions or limitations set by the board or may refuse a temporary license to a person if he has committed unprofessional conduct. The issuance of a temporary certificate imposes no future obligation or duty on the part of the board to grant full licensure or to renew or extend the temporary license. The board may, in the case of an applicant for a temporary certificate, require a written, oral, or practical examination of the applicant.

History: (1), (2)En. Sec. 17, Ch. 338, L. 1969; amd. Sec. 1, Ch. 166, L. 1974; amd. Sec. 100, Ch. 350, L. 1974; Sec. 66-1026, R.C.M. 1947; (3)En. Sec. 18, Ch. 338, L. 1969; amd. Sec. 3, Ch. 168, L. 1971; amd. Sec. 101, Ch. 350, L. 1974; amd. Sec. 1, Ch. 213, L. 1977; Sec. 66-1027, R.C.M. 1947; R.C.M. 1947, 66-1026, 66-1027(3).

Cross-References

Licensing investigation and review — record access, 37-1-135.

37-3-308. Examination and application fees — further tax forbidden. (1) An applicant for a license to practice medicine to be issued on the basis of an examination by the board shall pay an examination fee as set by the board. The board shall set the fee, and it shall be reasonable and commensurate with the costs of the examination and related costs. Such examination fee shall be in addition to the application fee.

(2) All applicants, including applicants for a temporary license, shall pay an initial application fee as prescribed by the board.

(3) No license tax shall be imposed upon physicians by a municipality or any other subdivision of the state.

History: En. Sec. 22, Ch. 338, L. 1969; amd. Sec. 1, Ch. 167, L. 1974; R.C.M. 1947, 66-1031; amd. Sec. 2, Ch. 345, L. 1981.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-3-309. Application for license. (1) A person desiring a license to practice medicine shall make application to the department, verified by oath and in a form prescribed by the board. The application shall be accompanied by the license fee and documents, affidavits, and certificates necessary to establish that the applicant possesses the qualifications prescribed by this chapter apart from an examination required by the board. The burden of proof is on the applicant, but the board may make an independent investigation to determine whether the applicant possesses the qualifications and whether the applicant has committed unprofessional conduct. At the board's request, the applicant shall provide necessary authorizations for the release of records and information pertinent to the board's information.

(2) An applicant for a license on the basis of an examination shall file his application at least 60 days prior to the announced date of the examination. If the applicant is not at the time of filing his application a graduate of but is then in attendance at an approved medical school, he shall submit to the department, instead of a diploma or other required evidence of graduation, a written statement from the dean or other authorized representative of the approved medical school that the applicant will receive his diploma at the end of the then-current school term. The applicant may not be granted a certificate until he has filed with the department his diploma or other acceptable evidence of graduation from the approved medical school and has complied with the requirements of subsection (1) of this section, and no license may be issued to him until he has satisfied the board that he has completed at least 1 year of an approved internship or its equivalent and has otherwise met the requirements for the issuance of a license under this chapter.

History: En. Sec. 23, Ch. 338, L. 1969; amd. Sec. 103, Ch. 350, L. 1974; R.C.M. 1947, 66-1032; amd. Sec. 1, Ch. 348, L. 1983.

Cross-References

"Oath" defined, 1-1-201.

Proof of execution, Title 1, ch. 5, part 3.

Power of notary to take acknowledgments, 1-5-416.

Oaths, Title 1, ch. 6.

Affidavits, Title 26, ch. 1, part 10.

Standardized forms, 37-1-104.

Reporting disciplinary actions against licensees, 37-1-105.

Perjury, 45-7-201.
False swearing, 45-7-202.

37-3-310. Notice of change of address or name — applicants — licensees. When a person applies for a license of any type to practice medicine in this state, the person shall designate in his application his correct and official address to which the department shall send communications, notices, orders, citations, or other process, if any, affecting him. A person licensed to practice medicine in this state shall keep the department advised at all times of his correct mailing address and of his correct name. If the person changes his address or when the name of a licensee is changed by marriage or otherwise, the person shall within 30 days notify the department in writing of his old and new address or of the former name and new name. This information shall be entered promptly by the department in the official records of the department.

History: En. Sec. 39, Ch. 338, L. 1969; amd. Sec. 113, Ch. 350, L. 1974; R.C.M. 1947, 66-1048.

37-3-311. Examination. (1) Examinations for a license to practice medicine shall be held not less than twice each year, at a time and place specified by the board. The examination shall be conducted in the English language and shall be sufficiently comprehensive in medicine to adequately test the applicant's professional competence and ability. The examination shall be fair and impartial. Examination papers shall be identified by both the name of the applicant and a number assigned by the department. The board may require the department to use the examination prepared by the national board of medical examiners or the examination prepared by the federation licensing examination committee or successors.

(2) An applicant must meet the requirements of 37-3-305 prior to taking a scheduled examination.

(3) An applicant who is a graduate of a foreign medical school shall have passed an examination given by the education council for foreign medical graduates or its successor.

(4) The board may in its discretion require the department to give, subject to 37-1-101, an oral or practical examination to test the applicant's qualifications for licensure and grant appropriate credit for this.

(5) The board may use other Montana physicians to assist in preparing the examination.

(6) A person may not be granted a license to practice medicine if he fails to attain a passing grade as set by the board. If an applicant fails to meet the minimum grade requirements in his first examination, he may be reexamined not more than two additional times on each of the component parts of the examination. An examination fee shall be charged for each additional examination. If an applicant is prevented through no fault of his own from taking a scheduled examination, he may, within 2 years, be examined without submitting a new application.

History: En. Sec. 24, Ch. 338, L. 1969; amd. Sec. 2, Ch. 167, L. 1974; amd. Sec. 104, Ch. 350, L. 1974; R.C.M. 1947, 66-1033; amd. Sec. 2, Ch. 348, L. 1983; amd. Sec. 1, Ch. 405, L. 1985.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

37-3-312. Issuance of license. If the board determines that an applicant possesses the qualifications required by this chapter, the department shall issue a license to practice medicine, which shall be signed by the president or vice-president, attested by the secretary, and sealed with the seal of the board.

History: En. Sec. 25, Ch. 338, L. 1969; amd. Sec. 105, Ch. 350, L. 1974; R.C.M. 1947, 66-1034(part).

37-3-313. Annual registration fees — failure to pay — limiting authority to impose registration fees. (1) In addition to the license fees required of applicants, a licensed physician actively practicing medicine in this state shall pay each year to the department an annual registration fee as prescribed by the board. If a person licensed to practice medicine absents himself from the state for a period of 1 or more years or does not engage in active practice in this state, he may continue his license in good standing by payment each year of a fee prescribed by the board or, at the discretion of the board, he may be reinstated on the payment of a fee prescribed by the board for each year of absence or inactive practice.

(2) The annual payments for registration shall be made prior to April 1, and a receipt acknowledging payment of the annual registration fee shall be issued by the department. The department shall mail registration notices at least 60 days before the registration is due.

(3) In case of default in the payment of the annual registration fee by a person licensed to practice medicine who is actively practicing medicine in this state, his underlying certificate to practice medicine may be revoked by the board on 30 days' notice given to the delinquent of the time and place of considering the revocation. A registered or certified letter addressed to the last-known address of the person failing to comply with the requirements of annual registration, as the address appears on the records of the department, constitutes sufficient notice of intention to revoke his underlying certificate. No certificate may be revoked for nonpayment if the person authorized to practice medicine, and notified, pays the annual registration fee before or at the time fixed for consideration of revocation, together with a delinquency penalty prescribed by the board. The department may collect the dues by an action at law.

(4) No registration or license fee may be imposed on a licensee under this chapter by a municipality or any other subdivision of the state.

History: En. Sec. 33, Ch. 338, L. 1969; amd. Sec. 110, Ch. 350, L. 1974; amd. Sec. 6, Ch. 533, L. 1977; R.C.M. 1947, 66-1042; amd. Sec. 3, Ch. 345, L. 1981.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Surcharge for pretrial review fund, 27-6-206.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-3-314. Deposit of money received. Money received under this chapter by the department shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6). In the case of a deficiency, the reserves in this account in the state special revenue fund may be used, on approval by the department of administration and the governor.

History: En. Sec. 34, Ch. 338, L. 1969; amd. Sec. 111, Ch. 350, L. 1974; R.C.M. 1947, 66-1043; amd. Sec. 1, Ch. 277, L. 1983.

37-3-315 through 37-3-320 reserved.

37-3-321. Refusal of license. If the board determines that an applicant for a license to practice medicine does not possess the qualifications or character required by this chapter or that he has committed unprofessional conduct, it shall refrain from authorizing the department to issue a license. The department shall mail to the applicant, at his last address of record with the department, written notification of the board's decision, together with notice of a time and place of a hearing before the board. If the applicant without cause fails to appear at the hearing or if after hearing the board determines he is not entitled to a license, the board shall refuse to grant the license.

History: En. Sec. 27, Ch. 338, L. 1969; amd. Sec. 106, Ch. 350, L. 1974; R.C.M. 1947, 66-1036.

Cross-References

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-3-322. Unprofessional conduct. As used in this chapter, "unprofessional conduct" means:

(1) resorting to fraud, misrepresentation, or deception in applying for or in securing a license or in taking the examination provided for in this chapter;

(2) performing abortion contrary to law;

(3) obtaining a fee or other compensation, either directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition of a person can be cured;

(4) employing abusive billing practices;

(5) directly or indirectly giving or receiving a fee, commission, rebate, or other compensation for professional services not actually rendered. This prohibition does not preclude the legal functioning of lawful professional partnerships, corporations, or associations.

(6) willful disobedience of:

(a) the rules adopted by the board; or

(b) an order of the board regarding evaluation or enforcement of discipline of a licensee;

(7) conviction of an offense involving moral turpitude or conviction of a felony involving moral turpitude, and the judgment of the conviction, unless pending on appeal, is conclusive evidence of unprofessional conduct;

(8) commission of an act of sexual abuse, misconduct, or exploitation related to the licensee's practice of medicine;

(9) administering, dispensing, or prescribing a narcotic or hallucinatory drug, as defined by the federal food and drug administration or successors, otherwise than in the course of legitimate or reputable professional practice;

(10) conviction or violation of a federal or state law regulating the possession, distribution, or use of a narcotic or hallucinatory drug, as defined by the federal food and drug administration, and the judgment of conviction, unless pending on appeal, is conclusive evidence of unprofessional conduct;

(11) habitual intemperance or excessive use of addictive drugs, alcohol, or any other drug or substance to the extent that the use impairs the user physically or mentally;

(12) conduct unbecoming a person licensed to practice medicine or detrimental to the best interests of the public as defined by rule of the board;

(13) conduct likely to deceive, defraud, or harm the public;

(14) making a false or misleading statement regarding the licensee's skill or the effectiveness or value of the medicine, treatment, or remedy prescribed by the licensee or at the licensee's direction in the treatment of a disease or other condition of the body or mind;

(15) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution, or organization, including fraud, misrepresentation, or deception with regard to a claim for benefits under Title 39, chapter 71 or 72;

(16) use of a false, fraudulent, or deceptive statement in any document connected with the practice of medicine;

(17) practicing medicine under a false or assumed name;

(18) testifying in court on a contingency basis;

(19) conspiring to misrepresent or willfully misrepresenting medical conditions improperly to increase or decrease a settlement, award, verdict, or judgment;

(20) aiding or abetting in the practice of medicine by a person not licensed to practice medicine or a person whose license to practice medicine is suspended;

(21) allowing another person or organization to use the licensee's license to practice medicine;

(22) malpractice or negligent practice;

(23) except as provided in this subsection, practicing medicine as the partner, agent, or employee of or in joint venture with a person who does not hold a license to practice medicine within this state; however, this does not prohibit:

(a) the incorporation of an individual licensee or group of licensees as a professional service corporation under Title 35, chapter 4;

(b) a single consultation with or a single treatment by a person licensed to practice medicine and surgery in another state or territory of the United States or foreign country; or

(c) practicing medicine as the partner, agent, or employee of or in joint venture with a hospital, medical assistance facility, or other licensed health care provider. However:

(i) the partnership, agency, employment, or joint venture must be evidenced by a written agreement containing language to the effect that the relationship created by the agreement may not affect the exercise of the physician's independent judgment in the practice of medicine;

(ii) the physician's independent judgment in the practice of medicine must in fact be unaffected by the relationship; and

(iii) the physician may not be required to refer any patient to a particular provider or supplier or take any other action the physician determines not to be in the patient's best interest.

(24) willfully or negligently violating the confidentiality between physician and patient, except as required by law;

(25) failing to report to the board any adverse judgment, settlement, or award arising from a medical liability claim related to acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this section;

(26) failing to transfer pertinent and necessary medical records to another physician when requested to do so by the subject patient or by the patient's legally designated representative;

(27) failing to furnish to the board or its investigators or representatives information legally requested by the board;

(28) failing to cooperate with a lawful investigation conducted by the board;

(29) violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate parts 1 through 3 of this chapter or the rules authorized by them;

(30) having been subject to disciplinary action of another state or jurisdiction against a license or other authorization to practice medicine, based upon acts or conduct by the licensee similar to acts or conduct that would constitute grounds for action as defined in this section. A certified copy of the record of the action taken by the other state or jurisdiction is evidence of unprofessional conduct.

(31) any other act, whether specifically enumerated or not, that, in fact, constitutes unprofessional conduct.

History: En. Sec. 28, Ch. 338, L. 1969; amd. Sec. 107, Ch. 350, L. 1974; R.C.M. 1947, 66-1037; amd. Sec. 3, Ch. 22, L. 1979; amd. Sec. 1, Ch. 328, L. 1989; amd. Sec. 1, Ch. 164, L. 1991; amd. Sec. 4, Ch. 419, L. 1993; amd. Sec. 11, Ch. 619, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 419 in (6)(a) inserted "adopted by the board"; in (6)(b), at beginning, inserted "an order" and after "board" inserted remainder of subsection regarding evaluation or enforcement of disciplinary action; in (11), before "drugs", substituted "addictive" for "narcotic"; and made minor changes in style. Amendment effective April 20, 1993.

Chapter 619 in (15), at end after "organization", inserted "including fraud, misrepresentation, or deception with regard to a claim for benefits under Title 39, chapter 71 or 72". Amendment effective July 1, 1993.

Cross-References

"Willfully" defined, 1-1-204.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Duties of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Duty of Board to establish program for licensed physicians impaired by intemperance or narcotic drugs, 37-3-203.

Dangerous drugs, Title 45, ch. 9.

Montana Abortion Control Act, Title 50, ch. 20.

Controlled substances, Title 50, ch. 32.

37-3-323. Revocation or suspension of license — probation — fine — disposition of fine. (1) The board may make an investigation whenever it is brought to its attention that there is reason to suspect that a person having a license or certificate to practice medicine in this state:

(a) is mentally or physically unable to safely engage in the practice of medicine, has procured a license to practice medicine by fraud or misrepresentation or through mistake, has been declared incompetent by a court of competent jurisdiction and thereafter has not been lawfully declared competent, or has a condition that impairs the person's intellect or judgment to the extent that it incapacitates the person for the safe performance of professional duties;

(b) has been guilty of unprofessional conduct;

(c) has practiced medicine with a suspended or revoked license;

(d) has had a license to practice medicine suspended or revoked by any licensing authority for reasons other than nonpayment of fees; or

(e) while under probation has violated its terms.

(2) The investigation must be for the purpose of determining the probability of the existence of these conditions or the commission of these offenses and may include requiring the person to submit to a physical examination or a mental examination, or both, by a physician or physicians selected by the board if it appears to be in the best interests of the public that this evaluation be secured. The board may examine and scrutinize the hospital records and reports of a licensee as part of the examination, and copies must be released to the board on written request. If the board has reasonable cause to believe that this probability exists, the department shall mail to the person's last address of record with the department a specification of the charges, together with a written notice of the time and place of the hearing on the charges, advising that the person may be present and may be represented by counsel if the person wants to offer evidence and be heard in the person's own defense. The time fixed for the hearing may not be less than 30 days from the date of mailing the notice.

(3) A person, including a member of the board, may file a written complaint with the department against a person having a license to practice medicine in this state charging that person with the commission of any of the offenses set forth in 37-3-322 or with any of the offenses or conditions set forth in subsection (1) of this section. The complaint must set forth a specification of the charges. When the complaint is filed, the department shall mail a copy to the person accused at the person's last address of record with the department, together with a written citation of the time and place of the hearing on it.

(4) At the hearing, the board shall adopt a resolution finding the accused guilty or not guilty of the matters charged. If the board finds that the offenses or conditions referred to in 37-3-322 or subsection (1) of this section do not exist with respect to the person or if the person is found not guilty, the board shall dismiss the charges or complaint. If the board finds that the offenses or conditions referred to in 37-3-322 or in subsection (1) of this section do exist and the person is found guilty, the board shall:

(a) revoke the person's license;

(b) suspend the person's right to practice for a period not exceeding 1 year;

(c) suspend its judgment of revocation on the terms and conditions to be determined by the board;

(d) place the person on probation;

(e) impose a fine, not to exceed $500 an incident; or

(f) take any other action in relation to disciplining the person as the board in its discretion considers proper.

(5) In a case of revocation, suspension, or probation, the department shall enter in its records the facts of the action and of subsequent action of the board with respect to it.

(6) On the expiration of the term of suspension, the licensee must be reinstated by the board if the suspended person furnishes the board with evidence that the person is then of good moral character and conduct, is restored to good health, and has not practiced medicine in this state during the term of suspension. If the evidence fails to establish to the satisfaction of the board that the holder is then of good moral character and conduct or restored to good health or if the evidence shows the person has practiced medicine in this state during the term of suspension, the board shall revoke the license, using the notice and hearing procedure provided in subsection (2). The revocation is final and absolute.

(7) If a person holding a license to practice medicine under this chapter is by a final order or adjudication of a court of competent jurisdiction adjudged to be mentally incompetent or seriously mentally ill or addicted to the use of addictive substances, the person's license may be suspended by the board. The suspension continues until the licensee is found or adjudged by the court to be restored to reason or cured or until the person is discharged as restored to reason or cured and the person's professional competence has been proven to the satisfaction of the board.

(8) A fine imposed under this section must be deposited in the general fund.

(9) The remedies and method of enforcement of this part, as provided for in this section, are concurrent and in addition to the other remedies provided in this part.

History: En. Sec. 29, Ch. 338, L. 1969; amd. Sec. 108, Ch. 350, L. 1974; amd. Sec. 1, Ch. 63, L. 1975; amd. Sec. 3, Ch. 101, L. 1977; R.C.M. 1947, 66-1038; amd. Sec. 1, Ch. 321, L. 1989; amd. Sec. 1, Ch. 540, L. 1991; amd. Sec. 5, Ch. 419, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 419 in (6) substituted "subsection (2)" for "subsection (1)"; in (7), in first sentence after "use of", substituted "addictive substances" for "narcotics"; and made minor changes in style. Amendment effective April 20, 1993.

Cross-References

Contested cases, Title 2, ch. 4, part 6.

Judicial review of contested cases, Title 2, ch. 4, part 7.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

37-3-324. Reconsideration and review of actions of board. The board may, on its own motion or upon application at any time after refusal, suspension, or the revocation of a license or of probation or of other action as in this chapter provided, reconsider its prior action and grant, reinstate, or restore such license or terminate the suspension thereof or terminate probation or reduce the severity of its prior disciplinary action, provided that the taking of any such further action or the holding of a hearing with respect thereto shall rest in the sole discretion of the board.

History: En. Sec. 30, Ch. 338, L. 1969; R.C.M. 1947, 66-1039.

37-3-325. Violations — penalties. (1) A person practicing medicine in this state without complying with parts 1 through 3 of this chapter or an association or corporation (except a professional service corporation under

Title 35, chapter 4) practicing medicine in this state or a person, association, or corporation violating parts 1 through 3 of this chapter or an officer or director of an association or corporation violating parts 1 through 3 of this chapter is guilty of a misdemeanor and on conviction shall be fined not less than $250 or more than $1,000 or imprisoned in the county jail for not less than 90 days or more than 1 year, or both. Each daily failure to comply with or each daily violation of parts 1 through 3 of this chapter constitutes a separate offense.

(2) A person presenting or attempting to file as his own the diploma, license, certificate, or credentials of another or who gives false or forged evidence to the board, a member of the board, or the department in connection with an application for a license to practice medicine or who practices medicine under a false or assumed name or who falsely impersonates another licensee is guilty of a felony and on conviction shall be imprisoned in the state penitentiary for a term of not less than 1 year or more than 10 years.

History: En. Sec. 32, Ch. 338, L. 1969; amd. Sec. 109, Ch. 350, L. 1974; R.C.M. 1947, 66-1041.

Cross-References

Rights of convicted, Art. II, sec. 28, Mont. Const.

Penalty for unlawful use of physician's assistant, 37-20-104.

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Perjury and other falsification in official matters, Title 45, ch. 7, part 2.

37-3-326. Injunctive relief — manner of charging violation. Notwithstanding any other provision in this chapter, the board may maintain an action to enjoin a person from engaging in the practice of medicine until a license to practice medicine is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court. The injunction does not relieve the person practicing medicine without a license from a criminal prosecution. The remedy by injunction is in addition to remedies provided for the criminal prosecution of the offender. In charging a person in a complaint for injunction or in an affidavit, information, or indictment with a violation of this law by practicing medicine without a license, it is sufficient to charge that he did, on a certain day and in a certain county, engage in the practice of medicine not having a license to do so, without averring further or more particular facts concerning the violation.

History: En. Sec. 36, Ch. 338, L. 1969; amd. Sec. 112, Ch. 350, L. 1974; R.C.M. 1947, 66-1045.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Disciplinary authority of boards — injunctions, 37-1-136.

37-3-327. Subpoena — fees. Whenever the board in the transaction of any of its business or in the conduct of any hearing or whenever any person interested in such business or hearing desires to secure the presence for testimony of any person before the board, the board or such person may procure a subpoena from the clerk of district court of the county in which the business is to be transacted or the hearing held. The clerk of the district court shall issue the subpoena in the name of the state of Montana, commanding the person whose presence and testimony is desired to appear before the board at a certain time and place fixed by the board to testify in the manner of such business or in such hearing. The subpoena shall be served in the same manner as a subpoena for a trial in the district court and shall be substantially in the same form. Fees or other charges demanded by a person commanded to appear and testify shall be only those which may be demanded by witnesses in causes in the district court and under the same circumstances.

History: En. Sec. 37, Ch. 338, L. 1969; R.C.M. 1947, 66-1046.

Cross-References

Power of agencies to issue subpoenas, 2-4-104.

Power of hearing officer to issue subpoenas, 2-4-611.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.

37-3-328. Failure to appear or testify. Any person subpoenaed in the manner provided in 37-3-327 who fails or refuses to appear and testify shall be dealt with by the district court from which such subpoena was issued in the same manner and to the same effect as though the subpoena had commanded him to appear and testify in a cause on trial in said court.

History: En. Sec. 38, Ch. 338, L. 1969; R.C.M. 1947, 66-1047.

Cross-References

Contempts, Title 3, ch. 1, part 5.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

Part 4

Reporting Obligations

Part Cross-References

Montana Medical Legal Panel Act, Title 27, ch. 6.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Nonliability for peer review, Title 37, ch. 2, part 2.

37-3-401. Report of incompetence or unprofessional conduct. (1) Notwithstanding any provision of state law dealing with confidentiality, each licensed physician, professional standards review organization, and the Montana medical association or any component society of the association shall and any other person may report to the board any information that the physician, organization, association, society, or person has that appears to show that a physician is:

(a) medically incompetent;

(b) mentally or physically unable to safely engage in the practice of medicine; or

(c) guilty of unprofessional conduct.

(2) (a) Information that relates to possible physical or mental impairment connected to habitual intemperance or excessive use of addictive drugs, alcohol, or any other drug or substance by a licensee or to other mental or chronic physical illness of a licensee may be reported to the appropriate

personnel of the program established by the board under 37-3-203(4), in lieu of reporting directly to the board.

(b) The program personnel referred to in subsection (2)(a) shall report to the board the identity of a licensee and all facts and documentation in their possession if:

(i) the licensee fails or refuses to comply with a reasonable request that the licensee undergo a mental, physical, or chemical dependency evaluation or a combination of evaluations;

(ii) the licensee fails or refuses to undergo a reasonable course of treatment that they recommend, including reasonable aftercare;

(iii) the licensee fails or refuses to satisfactorily complete a reasonable evaluation, a course of treatment, or aftercare;

(iv) the licensee's condition creates a risk of harm to the licensee, a patient, or others; or

(v) they are in possession of information that appears to show that the licensee has or is otherwise engaged in unprofessional conduct.

(3) This section applies to professional standards review organizations only to the extent that the organizations are not prohibited from disclosing information under federal law.

History: En. 66-1053 by Sec. 1, Ch. 172, L. 1977; R.C.M. 1947, 66-1053; amd. Sec. 6, Ch. 419, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 419 inserted (2) regarding program for physicians impaired by drugs or alcohol; and made minor changes in style. Amendment effective April 20, 1993.

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Duties of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Unprofessional conduct, 37-3-322.

37-3-402. Insurer to report to board. Any insurer that issues or underwrites professional liability insurance in this state to any physician licensed to practice medicine shall report any claim against the insured for alleged professional negligence to the state board of medical examiners within 30 days after receiving notice of the claim from the insured or any other person. A final settlement or court decision resolving the claim in favor of the claimant shall also be reported to the board within 30 days of such settlement or decision. The report required by this section shall include the name of the insured, the name of the person making the claim, the reason or reasons for which the claim is made, and the basis of the settlement or court decision.

History: En. 66-1054 by Sec. 2, Ch. 172, L. 1977; R.C.M. 1947, 66-1054; amd. Sec. 4, Ch. 243, L. 1981.

Cross-References

Information required of professional liability insurers — submission, 33-23-311.

37-3-403. Report of prohibition or limitation on practice by hospital. Each hospital or health care facility which prohibits or limits the privilege of a physician to practice medicine within that facility shall report such action to the state board of medical examiners within 30 days after the action is taken if the action is based in whole or in part upon the commission of one or more of the offenses or the existence of one or more of the conditions set forth in

37-3-322 or 37-3-323(1). The report shall include the reason or reasons for the prohibition or limitation.

History: En. 66-1055 by Sec. 3, Ch. 172, L. 1977; R.C.M. 1947, 66-1055.

37-3-404. Immunity of person providing information. A person, organization, association, society, or health care facility which in good faith provides information to the state board of medical examiners as required by 37-3-401, 37-3-402, or 37-3-403 is not subject to suit for civil damages as a result thereof.

History: En. 66-1056 by Sec. 4, Ch. 172, L. 1977; R.C.M. 1947, 66-1056.

Cross-References

Nonliability for peer review, Title 37, ch. 2, part 2.

37-3-405. Suspension of license or privilege for failure to report. The willful failure of any person, organization, association, society, or health care facility to comply with 37-3-401, 37-3-402, or 37-3-403 is grounds for suspension of any license or privilege granted by the state of Montana. Upon such failure, the agency granting the license or privilege may, in its discretion, suspend the license or privilege for a period not to exceed 1 month.

History: En. 66-1057 by Sec. 5, Ch. 172, L. 1977; R.C.M. 1947, 66-1057.

Cross-References

Suspension of license subject to contested case procedure, 2-4-631.

CHAPTER 4

DENTISTRY AND DENTAL HYGIENE

Part 1 — General

37-4-101. Definitions — practice of dentistry.
37-4-102. Designations constituting prima facie evidence of practicing dentistry.
37-4-103. Exemptions.

Part 2 — Board of Dentistry

37-4-201. Official seal — organization — subpoena power.
37-4-202. Meetings — notice — quorum — records.
37-4-203. Compensation and expenses of board members — disbursement of excess funds.
37-4-204. Affiliation with national association authorized — delegates.
37-4-205. Rulemaking.

Part 3 — Licensing

37-4-301. Examination — qualifications — fees — certification.
37-4-302. Recognition of dental schools and dental hygiene schools.
37-4-303. Replacing lost certificate.
37-4-304. Repealed.
37-4-305. Repealed.
37-4-306. Admission of dentists from other states — reciprocity.
37-4-307. Annual renewal fee — default — active, inactive status — continuing education — local fees prohibited.
37-4-308 through 37-4-320 reserved.
37-4-321. Grounds for disciplinary proceedings — range of sanctions — recovery of costs.
37-4-322. When publishing professional cards not unprofessional conduct.
37-4-323. Procedure for investigation — sanctions.

37-4-324. Board may procure court order to compel attendance of witnesses — contempt.
37-4-325. Witness fees and mileage.
37-4-326. Acts constituting misdemeanors.
37-4-327. Practicing dentistry without certificate — penalty.
37-4-328. Duty of county attorney — jurisdiction of justices' courts — injunction.

Part 4 — Dental Hygienists and Auxiliary Personnel

37-4-401. Practice of dental hygiene.
37-4-402. License — examination.
37-4-403. Issuance of certificate — fee.
37-4-404. Admission of dental hygienists from other states.
37-4-405. Dental hygienist to practice under supervision of licensed dentist.
37-4-406. Annual renewal fee — default — active, inactive status — continuing education — revocation of license — local fees prohibited.
37-4-407. Provisions not to apply to licensed dentist, physician, or surgeon.
37-4-408. Auxiliary personnel — employment, duties, and limitations.

Part 5 — Regulatory Provisions

37-4-501. Work order for construction or repair of appliances.
37-4-502. Restrictions on advertising and solicitation.
37-4-503. Identification of dentures.
37-4-504 through 37-4-510 reserved.
37-4-511. Limitations on the administration of general anesthetics and practices involving general anesthesia.
37-4-512 through 37-4-514 reserved.
37-4-515. Hospital admissions — patient histories and examinations.

Chapter Cross-References

Professional service corporations, Title 35, ch. 4.

General provisions relating to health care practitioners, Title 37, ch. 2.

Denturitry, Title 37, ch. 29.

Validity of consent to medical treatment, Title 41, ch. 1, part 4.

Dentist to report child abuse, 41-3-201.

Part 1
General

Part Cross-References

Limitations on dentistry and oral surgery practices involving general anesthesia, 37-4-511.

Duty of dentist to report violation of Montana Elder Abuse Prevention Act, 52-3-811.

37-4-101. Definitions — practice of dentistry. (1) Unless the context requires otherwise, in this chapter the following definitions apply:

(a) "Board" means the board of dentistry provided for in 2-15-1842.

(b) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(c) "Conscious sedation" means a minimally depressed level of consciousness in which the patient breathes normally without assistance, retains protective reflexes, and responds to physical stimulation or verbal command in a manner appropriate to the patient's cognitive level. Conscious sedation is not a form of general anesthesia, and brief interludes of unconsciousness during conscious sedation do not bring conscious sedation within the scope of general anesthesia.

(d) "General anesthesia" means a state of unconsciousness intentionally produced by anesthetic agents, with absence of pain sensation over the entire body and a greater or lesser degree of muscular relaxation. The drugs producing this state can be administered by inhalation, intravenously, intramuscularly, or via the gastrointestinal tract. General anesthesia is divided into:

(i) full general anesthesia, which means a level of consciousness in which the patient is without intact protective reflexes, is unable to maintain an airway, and is incapable of rational response to query or command; and

(ii) light general anesthesia, which means a level of consciousness in which the patient breathes normally without assistance and retains protective reflexes throughout most of the procedure.

(e) "General anesthetic" means any recognized anesthetic agent, sedative, hypnotic, tranquilizer, or narcotic used in sufficient prescribed dosages for the purpose of inducing general anesthesia. The term general anesthetic does not include a nitrous oxide/oxygen mixture or any other anesthetic administered to produce conscious sedation.

(2) A person is "practicing dentistry" under this chapter if he:

(a) performs, attempts, advertises to perform, causes to be performed by the patient or any other person, or instructs in the performance of dental operations, oral surgery, or dental service of any kind gratuitously or for a salary, fee, money, or other remuneration paid or to be paid, directly or indirectly, to himself, any other person, or agency;

(b) is a manager, proprietor, operator, or conductor of a place where dental operations, oral surgery, or dental services are performed;

(c) directly or indirectly, by any means or method, furnishes, supplies, constructs, reproduces, or repairs a prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth;

(d) places the appliance or structure in the human mouth or attempts to adjust it;

(e) advertises to the public, by any method, to furnish, supply, construct, reproduce, or repair a prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth;

(f) diagnoses, professes to diagnose, prescribes for, professes to prescribe for, treats, or professes to treat disease, pain, deformity, deficiency, injury, or physical condition of human teeth, jaws, or adjacent structures;

(g) extracts or attempts to extract human teeth or corrects, attempts, or professes to correct malpositions of teeth or of the jaw;

(h) gives or professes to give interpretations or readings of dental roentgenograms;

(i) administers an anesthetic of any nature, subject to the limitations provided in 37-4-511, in connection with a dental operation;

(j) uses the words "dentist", "dental surgeon", "oral surgeon", the letters "D.D.S.", "D.M.D.", or any other words, letters, title, or descriptive matter which in any way represents him as being able to diagnose, treat, prescribe, or operate for any disease, pain, deformity, deficiency, injury, or physical condition of human teeth, jaws, or adjacent structures;

(k) states, advertises, or permits to be stated or advertised, by sign, card, circular, handbill, newspaper, radio, or otherwise, that he can perform or will attempt to perform dental operations or render a diagnosis in connection therewith; or

(l) engages in any of the practices included in the curricula of recognized dental colleges.

History: (1)En. 66-901.1 by Sec. 77, Ch. 350, L. 1974; Sec. 66-901.1, R.C.M. 1947; (2)En. Sec. 10, Ch. 48, L. 1935; re-en. Sec. 3115.10, R.C.M. 1935; amd. Sec. 2, Ch. 38, L. 1941; amd. Sec. 3, Ch. 34, L. 1961; amd. Sec. 5, Ch. 352, L. 1969; amd. Sec. 83, Ch. 350, L. 1974; Sec. 66-910, R.C.M. 1947; R.C.M. 1947, 66-901.1, 66-910(1); amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 4, Ch. 363, L. 1981; amd. Sec. 1, Ch. 518, L. 1985.

Cross-References

Exemptions from physician's licensing requirements, 37-3-103.

37-4-102. Designations constituting prima facie evidence of practicing dentistry. Whenever any person shall append the word "dentist" or the letters "D.D.S.", "D.M.D.", or like letters to his or her name in any way for advertising or upon any door or sign or upon or in any writing or print, publish, or use the same in any way or cause either of the same to be done, the same shall be prima facie evidence that such person is engaged in the practice of dentistry and subject to the regulations, convictions, and penalties of this chapter.

History: En. Sec. 12, Ch. 48, L. 1935; re-en. Sec. 3115.12, R.C.M. 1935; R.C.M. 1947, 66-912.

37-4-103. Exemptions. (1) A dental laboratory or dental technician is not practicing dentistry under this chapter when engaged in the construction, making, alteration, or repairing of bridges, crowns, dentures, or other prosthetic appliances, surgical appliances, or orthodontic appliances if the casts, models, or impressions on which the work is constructed have been made by a regularly licensed and practicing dentist and the crowns, bridges, dentures, prosthetic appliances, surgical appliances, or orthodontic appliances are returned to the dentist on whose order the work was constructed.

(2) Section 37-4-101(2) and part 5 of this chapter do not apply to a legally qualified physician or surgeon or to a dental surgeon of the United States army, navy, public health service, or veterans' bureau or to a legal practitioner of another state making a clinical demonstration before a dental society, convention, or association of dentists or to a licensed dental hygienist performing an act authorized under 37-4-401 or 37-4-405.

(3) Nothing in this chapter prevents a bona fide faculty member of a school, college, or department of a university recognized and approved by the board from performing dental procedures necessary to his teaching functions. Nothing in this chapter prevents students from performing dental procedures under the supervision of a bona fide instructor of a school, college, or department of a university recognized and approved by the board provided such dental procedures are a part of the assigned teaching curriculum.

(4) This chapter does not prohibit or require a license with respect to the practice of denturitry under the conditions and limitations defined by Title 37, chapter 29. None of the regulations contained in this chapter apply to a person engaged in the lawful practice of denturitry.

History: En. Sec. 10, Ch. 48, L. 1935; re-en. Sec. 3115.10, R.C.M. 1935; amd. Sec. 2, Ch. 38, L. 1941; amd. Sec. 3, Ch. 34, L. 1961; amd. Sec. 5, Ch. 352, L. 1969; amd. Sec. 83,

Ch. 350, L. 1974; R.C.M. 1947, 66-910(2), (4); amd. Sec. 1, Ch. 337, L. 1979; amd. Sec. 24, I.M. No. 97, approved Nov. 6, 1984.

Part 2
Board of Dentistry

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1842.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-4-201. Official seal — organization — subpoena power. Said board shall have an official seal of its own design and shall employ the same to authenticate its acts and records as may be required. The board shall, at its annual meeting, choose from its members a president, vice-president, and secretary-treasurer, who shall serve at the pleasure of the board. Any member of the board shall have the power to administer oaths and affirmations and said board shall have the power to hear testimony and subpoena witnesses as to all matters relating to the duties imposed upon it by law.

History: En. Sec. 3, Ch. 48, L. 1935; re-en. Sec. 3115.3, R.C.M. 1935; R.C.M. 1947, 66-903.

Cross-References

Oath defined, 1-1-201.

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Oaths, Title 1, ch. 6.

Power of agencies to issue subpoenas, 2-4-104.

Power of hearing officer to issue subpoenas, 2-4-611.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.

37-4-202. Meetings — notice — quorum — records. (1) The board shall meet at least once each year in this state at the call of the president and secretary-treasurer. Five days' notice must be given by the department to board members of the time and place of the meeting of the board.

(2) Meetings held for the purpose of examining candidates for a license to practice dentistry in this state may not exceed 6 days.

(3) Five members of the board constitute a quorum for the transaction of business. Its proceedings are open to public inspection in cases of public interest.

(4) Money collected by the department under this chapter shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

(5) The department shall keep a complete record of meetings and proceedings of the board and shall keep a complete account of moneys received and disbursements made by the department.

History: (1), (3) thru (5)En. Sec. 4, Ch. 48, L. 1935; re-en. Sec. 3115.4, R.C.M. 1935; amd. Sec. 147, Ch. 147, L. 1963; amd. Sec. 25, Ch. 177, L. 1965; amd. Sec. 21, Ch. 93, L. 1969; amd. Sec. 1, Ch. 352, L. 1969; amd. Sec. 78, Ch. 350, L. 1974; Sec. 66-904, R.C.M. 1947; (2)En. Sec. 9, Ch. 48, L. 1935; re-en. Sec. 3115.9, R.C.M. 1935; amd. Sec. 149, Ch. 147, L. 1963; amd. Sec. 4, Ch. 352, L. 1969; amd. Sec. 82, Ch. 350, L. 1974; amd. Sec. 29, Ch. 439, L. 1975; amd. Sec. 2, Ch. 531, L. 1977; Sec. 66-909, R.C.M. 1947; R.C.M. 1947, 66-904, 66-909(2); amd. Sec. 2, Ch. 316, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 524, L. 1987.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Public records, Title 2, ch. 6.

Preservation of records, Title 22, ch. 3, part 2.

Duty of Department to keep records, 37-1-101.

Duty of Department to provide facilities, 37-1-101.

Licensing investigation and review — records access, 37-1-135.

Disrupting meeting as disorderly conduct, 45-8-101.

37-4-203. Compensation and expenses of board members — disbursement of excess funds. (1) Out of the funds derived from fees collected under this chapter, each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

(2) Money collected in excess of expenses and salaries provided for shall be held by the department as a special fund for meeting the expenses of the board, the proper administration of this chapter, and educational purposes considered wise by the board.

History: En. Sec. 9, Ch. 48, L. 1935; re-en. Sec. 3115.9, R.C.M. 1935; amd. Sec. 149, Ch. 147, L. 1963; amd. Sec. 4, Ch. 352, L. 1969; amd. Sec. 82, Ch. 350, L. 1974; amd. Sec. 29, Ch. 439, L. 1975; amd. Sec. 2, Ch. 531, L. 1977; R.C.M. 1947, 66-909(1), (3); amd. Sec. 5, Ch. 363, L. 1981; amd. Sec. 8, Ch. 474, L. 1981.

37-4-204. Affiliation with national association authorized — delegates. The board may affiliate with the national association as an active member, pay regular annual dues to the association, and send delegates to the meetings of the association.

History: En. Sec. 20, Ch. 48, L. 1935; re-en. Sec. 3115.20, R.C.M. 1935; amd. Sec. 8, Ch. 352, L. 1969; amd. Sec. 87, Ch. 350, L. 1974; R.C.M. 1947, 66-920; amd. Sec. 6, Ch. 363, L. 1981; amd. Sec. 9, Ch. 474, L. 1981; amd. Sec. 1, Ch. 349, L. 1983.

37-4-205. Rulemaking. The board may adopt, amend, or repeal rules necessary for the implementation, continuation, and enforcement of this chapter in accordance with the Montana Administrative Procedure Act. Rules adopted under this section may include but are not limited to the following subjects:

(1) the practice of dentistry or oral surgery involving the administration of anesthetics; and

(2) advertising by a licensed dentist including:

(a) the use of false, deceptive, or misleading advertising;

(b) the use of information concerning fees, areas of practice, specialization, personal background, and quality of service in advertising; and

(c) the use of warnings and disclaimers in advertising.

History: En. Sec. 2, Ch. 349, L. 1983; amd. Sec. 3, Ch. 518, L. 1985.

Cross-References

Administrative Procedure Act, Title 2, ch. 4.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Part 3
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-4-301. Examination — qualifications — fees — certification. (1) Applicants for licensure shall take and pass an examination in order to be licensed. The examination shall consist of a written part and a practical or clinical part. It may also include, at the board's discretion, an oral interview with the board which may include questions pertaining to the practice of dentistry. The board may accept, in satisfaction of the written part, successful completion of an examination by the national board of dental examiners and, whenever the board determines necessary, successful completion of a board examination in jurisprudence to be administered at times and places approved by the board. The board may accept, in satisfaction of the practical part, successful completion of an examination by a board-designated regional testing service.

(2) Acceptance by the board of such written and practical examination shall be conditioned on evidence that the examination is sufficiently thorough to test the fitness of the applicant to practice dentistry. It shall include, written in the English language, questions on anatomy, histology, physiology, chemistry, pharmacology and therapeutics, metallurgy, pathology, bacteriology, anesthesia, operative and surgical dentistry, prosthetic dentistry, prophylaxis, orthodontics, periodontics and endodontics, and any additional subjects pertaining to dental service.

(3) The board has the right to administer its own examination in lieu of acceptance of the national board written examination and a regional testing service practical examination. The board is authorized to make rules governing any such examination procedures.

(4) Applicants for licensure shall submit an application, which shall include, when required:

(a) certification of successful completion of the national board written examination;

(b) certification of successful completion of a regional board practical examination;

(c) three affidavits of good moral character;

(d) certificate of graduation from a board-approved dental school;

(e) an examination fee commensurate with costs and set by the board;

(f) a licensure fee commensurate with costs and set by the board;

(g) a recent photograph of the applicant; and

(h) copies of all other state licenses that are held by the applicant.

(5) Applications must be submitted no less than 20 days prior to the board interview and jurisprudence examination.

(6) Applicants may not take the jurisprudence examination or the oral interview without first having completed and passed all other parts of the examination.

(7) Examination results will be accepted for a period of time as set by board rule. An applicant failing to pass his first examination, if otherwise qualified, may take a subsequent examination upon payment of a fee commensurate with costs and set by the board.

(8) The board is authorized to adopt necessary and reasonable rules governing application procedures.

History: En. Sec. 5, Ch. 48, L. 1935; re-en. Sec. 3115.5, R.C.M. 1935; amd. Sec. 1, Ch. 38, L. 1941; amd. Sec. 1, Ch. 34, L. 1961; amd. Sec. 2, Ch. 352, L. 1969; amd. Sec. 1, Ch. 287,

L. 1971; amd. Sec. 79, Ch. 350, L. 1974; R.C.M. 1947, 66-905; amd. Sec. 2, Ch. 337, L. 1979; amd. Sec. 3, Ch. 349, L. 1983; amd. Sec. 1, Ch. 62, L. 1987.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-4-302. Recognition of dental schools and dental hygiene schools. In determining what constitutes a recognized dental college, the board shall be guided by the standards, canons, and practices required for recognition by the commission on dental accreditation. In determining what constitutes a recognized dental hygiene school, the board shall recognize only those dental hygiene schools accredited by the commission on dental accreditation or its successor as designated by the United States department of education or the council on post-secondary accreditation, or both.

History: En. Sec. 24, Ch. 48, L. 1935; re-en. Sec. 3115.24, R.C.M. 1935; amd. Sec. 13, Ch. 352, L. 1969; R.C.M. 1947, 66-924; amd. Sec. 1, Ch. 66, L. 1991.

37-4-303. Replacing lost certificate. The department shall, on proof satisfactory to the board of the loss of a certificate issued under this chapter, issue a duplicate certificate, and a fee as prescribed by the board shall be charged for issuing the certificate.

History: En. Sec. 6, Ch. 48, L. 1935; re-en. Sec. 3115.6, R.C.M. 1935; amd. Sec. 2, Ch. 34, L. 1961; amd. Sec. 148, Ch. 147, L. 1963; amd. Sec. 3, Ch. 352, L. 1969; amd. Sec. 80, Ch. 350, L. 1974; R.C.M. 1947, 66-906(1); amd. Sec. 1, Ch. 66, L. 1981; amd. Sec. 4, Ch. 345, L. 1981.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-4-304. Repealed. Sec. 4, Ch. 66, L. 1981.

History: En. Sec. 7, Ch. 48, L. 1935; re-en. Sec. 3115.7, R.C.M. 1935; R.C.M. 1947, 66-907.

37-4-305. Repealed. Sec. 4, Ch. 66, L. 1981.

History: En. Sec. 8, Ch. 48, L. 1935; re-en. Sec. 3115.8, R.C.M. 1935; amd. Sec. 81, Ch. 350, L. 1974; R.C.M. 1947, 66-908.

37-4-306. Admission of dentists from other states — reciprocity. (1) A dentist who has been lawfully licensed to practice in another state or territory which has and maintains a standard for the practice of dentistry or dental surgery which in the opinion of the board is equal to that at the time maintained in this state, is a graduate of an accredited 4-year high school or has actual scholastic credits equivalent to a 4-year high school course, is a graduate of a recognized dental school or college, has been lawfully and continuously engaged in the practice of dentistry for 5 years or more immediately before filing his application to practice in this state, and deposits in person with the department an attested certificate from the examining board of the state or territory in which he is registered or licensed, certifying to the fact of his registration and license and of his being a person of good moral character and of professional attainments, may, on the payment of a fee as prescribed by the board, and after satisfactory practical examination demonstrating his proficiency, be granted a license to practice dentistry in this state without being required to take an examination in theory.

(2) However, no license may be issued to an applicant without an examination in theory unless the state or territory from which the certificate has been granted to the applicant extends a like privilege to engage in the practice of dentistry to dentists licensed by this state who move to the other state. The board may enter into reciprocal relations with similar boards of other states whose laws are practically identical with this chapter.

History: En. Sec. 6, Ch. 48, L. 1935; re-en. Sec. 3115.6, R.C.M. 1935; amd. Sec. 2, Ch. 34, L. 1961; amd. Sec. 148, Ch. 147, L. 1963; amd. Sec. 3, Ch. 352, L. 1969; amd. Sec. 80, Ch. 350, L. 1974; R.C.M. 1947, 66-906(2); amd. Sec. 5, Ch. 345, L. 1981.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-4-307. Annual renewal fee — default — active, inactive status — continuing education — local fees prohibited. (1) Every licensed dentist shall pay each year a renewal fee to the board. The renewal fee must be set by the board commensurate with costs. Notice of the change in the amount of renewal fees must be given to each dentist registered in this state by the department.

(2) Payment of the annual renewal fee must be made prior to March 1 of each year, and a license renewal must be issued by the department. A reasonable late fee is required if the annual renewal fee is not paid before March 1.

(3) The board may adopt rules governing requirements for demonstrating continued competency for license renewal.

(4) (a) The board may reclassify an active status license to inactive status for a licensee who furnishes satisfactory evidence that the licensee has discontinued the actual practice of dentistry because of physical disability or retirement.

(b) An individual who wishes to maintain a Montana license but does not maintain a resident practice must be licensed in the inactive status.

(c) Application to convert an inactive status license to an active status license must be made in accordance with rules of the board. The application to convert to active status must accompany the submission of the renewal fee prescribed for such license. If more than 1 year has passed since the license was inactivated, satisfactory evidence of competence must be submitted to the board before an active status license may be issued.

(5) (a) In case of default in payment of the annual renewal fee by a licensee, his license must be revoked by the board. The board shall give the licensee 30 days' notice of its proposed revocation action. The notice must be sent by certified letter addressed to the last-known address of the licensee and must contain a statement of the time and place of the meeting at which the revocation will be considered.

(b) If the licensee pays the renewal fee, plus a reasonable late fee set by the board, prior to the time set for revocation, the license may not be revoked.

(c) A license revoked for nonpayment of the renewal fee may be reinstated within 5 years of revocation if:

(i) renewal fees are paid for each year they were unpaid, plus a late penalty fee for each year;

(ii) the applicant produces evidence, satisfactory to the board, of good standing with the dentistry regulatory agencies of any jurisdiction in which the applicant has engaged in the active practice of dentistry since the last payment of a renewal fee under this chapter; and

(iii) the applicant produces evidence, satisfactory to the board, of good character and competence.

(6) Every dentist shall give the board notice of any change in name, address, or status within 30 days of the change.

(7) No unit of local government, including those exercising self-government powers, may impose a license fee on a dentist licensed under this chapter.

History: En. Sec. 6, Ch. 48, L. 1935; re-en. Sec. 3115.6, R.C.M. 1935; amd. Sec. 2, Ch. 34, L. 1961; amd. Sec. 148, Ch. 147, L. 1963; amd. Sec. 3, Ch. 352, L. 1969; amd. Sec. 80, Ch. 350, L. 1974; R.C.M. 1947, 66-906(3) thru (6); amd. Sec. 3, Ch. 337, L. 1979; amd. Sec. 6, Ch. 345, L. 1981; amd. Sec. 7, Ch. 363, L. 1981; amd. Sec. 4, Ch. 349, L. 1983.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-4-308 through 37-4-320 reserved.

37-4-321. Grounds for disciplinary proceedings — range of sanctions — recovery of costs. (1) The board may censure, prescribe probation, suspend, or revoke any license issued under this chapter or fine the licensee not to exceed $5,000 per incident for any of the following causes:

(a) physical or mental incompetence;

(b) malpractice;

(c) unprofessional conduct, as defined by rule of the board; or

(d) violation of any of the provisions of this chapter or rules or orders of the board.

(2) The board may, following a final determination resulting in any disciplinary action taken by the board under subsection (1), recover from the disciplined party all reasonable costs of any proceeding incurred for the purposes of that disciplinary action. Fines and costs recovered must be deposited in the board's special revenue account.

History: En. Sec. 13, Ch. 48, L. 1935; re-en. Sec. 3115.13, R.C.M. 1935; amd. Sec. 6, Ch. 352, L. 1969; amd. Sec. 85, Ch. 350, L. 1974; R.C.M. 1947, 66-913(1), (2); amd. Sec. 1, Ch. 493, L. 1979; amd. Sec. 8, Ch. 363, L. 1981; amd. Sec. 2, Ch. 62, L. 1987; amd. Sec. 44, Ch. 83, L. 1989.

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Duties of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Disciplinary authority of boards — injunctions, 37-1-136.

37-4-322. When publishing professional cards not unprofessional conduct. (1) It shall not be considered unprofessional for a dentist to place in any newspaper or publication, subject to the limitations stated hereafter, a card bearing his name only, together with his degree or the word "dentist" and giving office location, hours, and telephone numbers. If he limits his practice to a specialty he may so announce it or he may announce his absence from or his return to practice in the same manner.

(2) A dentist may publish a list of his fees, but such listing must include full and complete information stating if the published fee is minimum, maximum, or usual and whether or not any additional charges may be made for the services published. All announcements or publications must be done in a professional manner that will in no way coerce or confuse the public.

History: En. Sec. 17, Ch. 48, L. 1935; re-en. Sec. 3115.17, R.C.M. 1935; amd. Sec. 5, Ch. 34, L. 1961; amd. Sec. 7, Ch. 352, L. 1969; R.C.M. 1947, 66-917; amd. Sec. 2, Ch. 493, L. 1979.

Cross-References

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-4-323. Procedure for investigation — sanctions. (1) Upon receipt of a complaint or upon its own motion the board shall determine whether the matters alleged warrant investigation and may cause investigation to be made. If the board finds preliminary cause for imposing the sanctions listed in 37-4-321, it may do so in accordance with the provisions of the Montana Administrative Procedure Act. If the board finds that the evidence obtained does not justify the imposition of sanctions, it must so notify the licensee concerned and the complaining party and take no further action.

(2) If the board finds that the evidence obtained does not warrant suspension or revocation of a license but does warrant other sanctions, it may either:

(a) issue a public or private decree of censure; or

(b) impose a probation with terms and conditions appropriately adapted under the circumstances of the particular case.

(3) The licensee is entitled to an opportunity for a contested case hearing before a sanction of censure or probation becomes effective to the same extent an opportunity for hearing is afforded prior to suspension or revocation.

(4) In addition to its authority to impose sanctions, the board may deny an application for a license for any of the following reasons:

(a) failure to meet the relevant requirements of Title 37, chapter 4;

(b) making any untrue or fraudulent statement in support of the application; or

(c) any of the grounds set forth in 37-4-321 for suspension or revocation of a license.

History: En. Sec. 13, Ch. 48, L. 1935; re-en. Sec. 3115.13, R.C.M. 1935; amd. Sec. 6, Ch. 352, L. 1969; amd. Sec. 85, Ch. 350, L. 1974; R.C.M. 1947, 66-913(3) thru (6); amd. Sec. 3, Ch. 493, L. 1979.

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensee, 37-1-105.

Duties of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

37-4-324. Board may procure court order to compel attendance of witnesses — contempt. (1) The district court in and for the county in which any inquiry, investigation, hearing, or proceeding may be held by the board or any member thereof shall have the power to compel the attendance of witnesses, the giving of testimony, and the production of papers, books, accounts, and documents as required by any subpoena issued by the board or any member thereof.

(2) In case of the refusal of any witness to attend or testify or produce any papers required by such subpoena, the board or any member thereof before whom the testimony is to be given or produced may report to the district court in and for the county in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place fixed for the attendance of said witness or the production of said papers and that the witness has been summoned in the manner prescribed in this chapter and that the witness has failed and refused to attend or produce the papers required by the subpoena before the board or any member thereof in the case or proceeding named in the notice and subpoena or has refused to answer questions propounded to him in the course of such proceedings and ask an order of said court compelling the witness to attend and testify or produce said papers before the board. The court, upon the petition of the board or any member of the board, shall enter an order directing the witness to appear before the court at the time and place to be fixed by the court in such order, not more than 10 days from the date of the order, and then and there show cause why he has not attended or testified or produced such papers before the board. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the board or a member thereof and regularly served, the court shall thereupon enter an order that said witness appear at the time and place fixed in said order and testify or produce the required papers, and upon failure to obey said order, said witness shall be dealt with as for contempt of court.

History: En. Sec. 16, Ch. 48, L. 1935; re-en. Sec. 3115.16, R.C.M. 1935; R.C.M. 1947, 66-916.

Cross-References

Power of agencies to issue subpoenas, 2-4-104.

Power of hearing officer to issue subpoenas, 2-4-611.

Contempts, Title 3, ch. 1, part 5.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.

37-4-325. Witness fees and mileage. (1) Each witness who shall appear by order of the board or any member thereof shall be entitled to receive, if demanded, for his attendance the same fees and mileage allowed by law to a witness in civil cases in the district court, which amount shall be paid by the party at whose request such witness is subpoenaed unless otherwise ordered by the board. When any witness who has not been required to attend at the request of any party is subpoenaed by the board, his fees and mileage may be paid from the funds of the board in the same manner as other expenses of the board are paid.

(2) Any witness subpoenaed, except one whose fees and mileage may be paid from the funds of the board, may at the time of service demand the fee to which he is entitled for travel to and from the place at which he is required to appear and 1 day's attendance. If such witness demands such fees at the

time of service and they are not at that time paid or tendered, he shall not be required to attend before the board or a member thereof or referee as directed in the subpoena.

History: En. Sec. 15, Ch. 48, L. 1935; re-en. Sec. 3115.15, R.C.M. 1935; R.C.M. 1947, 66-915.

Cross-References

Mileage allowed witnesses, 2-18-503, 2-18-504.

Witness fees, Title 26, ch. 2, part 5.

37-4-326. Acts constituting misdemeanors. Any person, company, or association shall be guilty of a misdemeanor and upon conviction thereof shall be punishable with a fine of not less than $50 or more than $200 or by imprisonment for not more than 6 months in the county jail or by both such fine and imprisonment who shall:

(1) sell or barter or offer to sell or barter any diploma or document conferring or purporting to confer any dental degree or any certificate or transcript made or purporting to be made pursuant to the laws regulating the license and regulation of dentists;

(2) purchase or procure by barter any such diploma, certificate, or transcript with intent that the same shall be used as evidence of the holder's qualification to practice dentistry or in fraud of the laws regulating such practice;

(3) with fraudulent intent, alter in a material regard any such diploma, certificate, or transcript;

(4) use or attempt to use any such diploma, certificate, or transcript which has been purchased, fraudulently issued, counterfeited, or materially altered, either as a license or color of license to practice dentistry or in order to procure registration as a dentist;

(5) practice dentistry under a false or assumed name;

(6) in an affidavit required of an applicant for examination, license, or registration under this chapter, willfully make a false statement in a material regard;

(7) engage in the practice of dentistry under any title or name without causing to be displayed in a conspicuous manner and in a conspicuous place in his or her office the required annual registration certificate for the current year; or

(8) within 10 days after demand made by the secretary of the board, fail to furnish to said board the names and addresses of all persons practicing or assisting in the practice of dentistry in the office of said person, company, or association at any time within 60 days prior to said notice, together with a sworn statement showing under and by what license or authority said person, company, or association and said employee are and have been practicing dentistry, but said affidavit shall not be used as evidence against said person, company, or association in any proceeding under this section.

History: En. Sec. 18, Ch. 48, L. 1935; re-en. Sec. 3115.18, R.C.M. 1935; R.C.M. 1947, 66-918.

Cross-References

"Willfully" defined, 1-1-204.

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

37-4-327. Practicing dentistry without certificate — penalty. (1) A person who, as principal, agent, employer, employee, or assistant, practices dentistry or who does an act of dentistry without having first secured a certificate to practice dentistry from the department entitling him to practice in this state is guilty of a misdemeanor and on conviction in a district court may be fined not less than $500 or more than $1,000 or be confined for a period not exceeding 6 months in the county jail.

(2) Fines imposed and collected under this chapter, except those paid to a justice's court, shall be paid into the treasury of the county in which the suits, actions, or proceedings are commenced. Money paid into the treasury over and above the amount necessary to reimburse the county for expense incurred by the county in a suit, action, or proceeding brought under this chapter shall be deposited before January 1 of each year in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 19, Ch. 48, L. 1935; re-en. Sec. 3115.19, R.C.M. 1935; amd. Sec. 3, Ch. 38, L. 1941; amd. Sec. 150, Ch. 147, L. 1963; amd. Sec. 86, Ch. 350, L. 1974; R.C.M. 1947, 66-919; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 22, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

37-4-328. Duty of county attorney — jurisdiction of justices' courts — injunction. (1) The county attorney of the county in which an offense is alleged to have occurred shall attend to the prosecution of complaints made under this chapter, both on trial in the justice's court where the complaint is made and also on hearing in the district court, either on the complaint or on information or indictment filed against a person under this chapter in the district court. This chapter does not prevent the prosecution of a person for violation of this chapter on the information of the county attorney directly.

(2) Justice's courts have original concurrent jurisdiction of misdemeanors committed under this chapter.

(3) If a person, firm, or corporation engages in the practice of dentistry without possessing a valid license or violates this chapter, the attorney general, a county attorney, or the board may maintain an action in the name of this state to enjoin the person, firm, or corporation from engaging in the practice of dentistry or otherwise violating this chapter. The injunction does not relieve criminal prosecution, but the remedy by injunction is in addition to the liability of the offender to criminal prosecution.

History: En. Sec. 11, Ch. 48, L. 1935; re-en. Sec. 3115.11, R.C.M. 1935; amd. Sec. 4, Ch. 34, L. 1961; amd. Sec. 84, Ch. 350, L. 1974; R.C.M. 1947, 66-911.

Cross-References

Duties of Attorney General, 2-15-501.

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Criminal jurisdiction of Justices' Courts, 3-10-303.

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Disciplinary authority of boards — injunctions, 37-1-136.

Part 4

Dental Hygienists and Auxiliary Personnel

37-4-401. Practice of dental hygiene. The practice of dental hygiene is services, performed by a licensed preventive oral health practitioner known as a dental hygienist, that are educational, therapeutic, prophylactic, or preventive procedures in nature, as the board in writing defines and authorizes, and that may be performed under general supervision of a licensed dentist. The practice of dental hygiene also includes and the board shall authorize the administration of local anesthetic agents by a licensed dental hygienist certified by the board to administer the agents only under the direct supervision and authorization of a licensed dentist. However, this section does not allow the board or a licensed dentist to delegate any of the following duties:

(1) diagnosis, treatment planning, and prescription;

(2) surgical procedures on hard and soft tissues other than root planing and subgingival curettage;

(3) restorative, prosthetic, orthodontic, and other procedures which require the knowledge and skill of a dentist;

(4) prescription for drugs or medications or work authorizations.

History: En. Sec. 21, Ch. 48, L. 1935; re-en. Sec. 3115.21, R.C.M. 1935; amd. Sec. 9, Ch. 352, L. 1969; amd. Sec. 88, Ch. 350, L. 1974; R.C.M. 1947, 66-921(part); amd. Sec. 5, Ch. 349, L. 1983; amd. Sec. 1, Ch. 449, L. 1985; amd. Sec. 2, Ch. 66, L. 1991.

Cross-References

Practice of healing arts not practice of medicine, 37-3-103(1)(n).

Limitations on the administration of general anesthetics, 37-4-511.

37-4-402. License — examination. (1) The department may issue licenses for the practice of dental hygiene to qualified applicants to be known as dental hygienists.

(2) Except as provided in 37-4-404, no person may engage in the practice of dental hygiene or practice as a dental hygienist in this state until he has passed an examination approved by the board under rules it considers proper and has been issued a license by the department.

(3) Applicants for licensure shall take and pass an examination in order to be licensed. The examination shall consist of a written part and a practical or clinical part. The board may accept, in satisfaction of the written part, successful completion of an examination by the national board of dental examiners and, whenever the board determines necessary, successful completion of a board examination in jurisprudence. The board may accept, in satisfaction of the practical part, successful completion of an examination by a board-designated regional testing service.

(4) The board has the right to administer its own examination in lieu of acceptance of the national board written examination and a regional testing service practical examination. The board is authorized to make rules governing any such examination procedures.

(5) Applicants for licensure shall submit an application, which shall include, when required:

(a) certification of successful completion of the national board written examination;

(b) certification of successful completion of a regional board practical examination;

(c) two affidavits of good moral character;

(d) certificate of graduation from a board-approved dental hygiene school;

(e) an examination fee commensurate with costs and set by the board;

(f) a licensure fee commensurate with costs and set by the board;

(g) a recent photograph of the applicant; and

(h) copies of all other state licenses that are held by the applicant.

(6) Applications must be submitted no less than 20 days prior to the jurisprudence examination. Applicants may not take the jurisprudence examination without first having completed and passed all other parts of the examination.

(7) Examination results will be accepted for a period of time as set by board rule. An applicant failing to pass his first examination, if otherwise qualified, may take a subsequent examination on payment of a fee commensurate with costs and set by the board.

(8) The board is authorized to adopt necessary and reasonable rules governing application procedures.

History: En. Secs. 21, 23, Ch. 48, L. 1935; re-en. Secs. 3115.21, 3115.23, R.C.M. 1935; amd. Secs. 9, 11, Ch. 352, L. 1969; amd. Secs. 88, 90, Ch. 350, L. 1974; R.C.M. 1947, 66-921(part), 66-923(3); amd. Sec. 4, Ch. 337, L. 1979; amd. Sec. 6, Ch. 349, L. 1983; amd. Sec. 2, Ch. 449, L. 1985.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Duty of Department to administer and grade examinations, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

37-4-403. Issuance of certificate — fee. An applicant who successfully passes the examination prescribed by the board shall, on the payment of a fee prescribed by the board, be granted a license as a dental hygienist and shall be registered in a record kept by the department and shall receive a certificate, signed by the members of the board, in a form prescribed by the board.

History: En. Sec. 21, Ch. 48, L. 1935; re-en. Sec. 3115.21, R.C.M. 1935; amd. Sec. 9, Ch. 352, L. 1969; amd. Sec. 88, Ch. 350, L. 1974; R.C.M. 1947, 66-921(5); amd. Sec. 7, Ch. 345, L. 1981.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-4-404. Admission of dental hygienists from other states. On the payment of a fee prescribed by the board, a dental hygienist may be granted a license to practice dental hygiene in this state if he:

(1) has been lawfully licensed to practice in another state or territory which has and maintains a standard for the practice of dental hygiene which, in the opinion of the board, is equal to that at the time maintained in this state;

(2) has been lawfully and continuously engaged in the practice of dental hygiene for a period of at least 500 hours during the 1-year period immediately before filing his application to practice in this state;

(3) deposits in person with the department an attested certificate from the examining board of the state or territory in which he is registered or

licensed, certifying to the fact of his registration and license and of his being a person of good moral character and of professional attainments; and

(4) deposits in person with the department evidence of graduation from a school of dental hygiene accredited by the commission on dental accreditation or its successor as recognized by the United States department of education and the council on post-secondary accreditation.

History: En. Sec. 23, Ch. 48, L. 1935; re-en. Sec. 3115.23, R.C.M. 1935; amd. Sec. 11, Ch. 352, L. 1969; amd. Sec. 90, Ch. 350, L. 1974; R.C.M. 1947, 66-923(1), (2), (4); amd. Sec. 8, Ch. 345, L. 1981; amd. Sec. 7, Ch. 349, L. 1983; amd. Sec. 3, Ch. 66, L. 1991.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-4-405. Dental hygienist to practice under supervision of licensed dentist. (1) A licensed dental hygienist, with the permission of the supervising dentist, may practice in the office of a licensed and actively practicing dentist, in a public or private institution, under a board of health, or in a public clinic authorized by the board, under the general supervision of a licensed dentist; however, the dental hygienist may give instruction in oral hygiene without the supervision of a licensed dentist in a public or private institution or hospital or extended care facility or under a board of health or in a public clinic.

(2) For the purposes of this section, "supervision" is defined as follows:

(a) "direct supervision" means treatment by a dental auxiliary or licensed dental hygienist provided with the intent and knowledge of the dentist. The treatment must be performed while the dentist is on the premises.

(b) "general supervision" means treatment, except the administration of local anesthesia, by a licensed dental hygienist provided with the intent and knowledge of the dentist licensed and residing in the state of Montana. The supervising dentist need not be on the premises.

History: En. Sec. 21, Ch. 48, L. 1935; re-en. Sec. 3115.21, R.C.M. 1935; amd. Sec. 9, Ch. 352, L. 1969; amd. Sec. 88, Ch. 350, L. 1974; R.C.M. 1947, 66-921(6); amd. Sec. 4, Ch. 493, L. 1979; amd. Sec. 9, Ch. 363, L. 1981; amd. Sec. 4, Ch. 66, L. 1991.

37-4-406. Annual renewal fee — default — active, inactive status — continuing education — revocation of license — local fees prohibited. (1) Every licensed dental hygienist shall pay each year a renewal fee to the board. The renewal fee must be set by the board commensurate with costs. The renewal must be for either active or inactive status, as defined by rules of the board.

(2) Payment of the annual renewal fee must be made prior to March 1 of each year, and a license renewal must be issued by the department. A reasonable late fee is required if the annual renewal fee is not paid before March 1.

(3) The board may adopt rules governing requirements for demonstrating continued competency for license renewal.

(4) (a) The board may reclassify an active status license to inactive status for a licensee who furnishes satisfactory evidence that the licensee has discontinued the actual practice of dental hygiene because of physical disability or retirement.

(b) An individual who wishes to maintain a Montana license but does not maintain a resident practice must be licensed in the inactive status.

(c) Application to convert an inactive status license to an active status license must be made in accordance with rules of the board. The application to convert to active status must accompany the submission of the renewal fee prescribed for such license. If more than 1 year has passed since the license was inactivated, satisfactory evidence of competence must be submitted to the board before an active status license may be issued.

(5) In case of default in payment of the renewal fee by any licensee, the board must revoke the license.

(a) The board shall give the licensee 30 days' notice of its proposed revocation action. The notice must be sent by certified mail to the last-known address of the licensee and must contain a statement of the time and place of the meeting at which the revocation will be considered.

(b) The payment of the renewal fee on or before the time set for revocation, with a reasonable late fee set by the board, excuses the default.

(c) A license revoked for nonpayment of the renewal fee may be reinstated within 5 years of revocation if:

(i) renewal fees are paid for each year they were unpaid, plus a late penalty for each year;

(ii) the applicant produces evidence, satisfactory to the board, of good standing with the dental hygiene regulatory agencies of any jurisdiction in which the applicant has engaged in the active practice of dental hygiene since the last payment of a renewal fee under this chapter; and

(iii) the applicant produces evidence, satisfactory to the board, of good character and competence.

(6) Every dental hygienist shall give the board notice of any change in name, address, or status within 30 days of the change.

(7) The board may, after a hearing, revoke or suspend the license of a dental hygienist for violating this chapter.

(8) No unit of local government, including those exercising self-government powers, may impose a license fee on a dental hygienist licensed under this chapter.

History: En. Sec. 22, Ch. 48, L. 1935; re-en. Sec. 3115.22, R.C.M. 1935; amd. Sec. 10, Ch. 352, L. 1969; amd. Sec. 89, Ch. 350, L. 1974; R.C.M. 1947, 66-922; amd. Sec. 5, Ch. 337, L. 1979; amd. Sec. 9, Ch. 345, L. 1981; amd. Sec. 8, Ch. 349, L. 1983.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-4-407. Provisions not to apply to licensed dentist, physician, or surgeon. Nothing in this chapter relating to the practice of dental hygiene applies to its practice by a licensed dentist or a licensed physician and surgeon in this state.

History: En. Sec. 23, Ch. 48, L. 1935; re-en. Sec. 3115.23, R.C.M. 1935; amd. Sec. 11, Ch. 352, L. 1969; amd. Sec. 90, Ch. 350, L. 1974; R.C.M. 1947, 66-923(5).

Cross-References

Exemptions from physician's licensing requirements, 37-3-103.

37-4-408. Auxiliary personnel — employment, duties, and limitations. A dental auxiliary is a person other than a licensed dental hygienist employed by a licensed dentist. The board may, within the limitations of this chapter, adopt rules that define the qualifications and outline the tasks of any unlicensed auxiliary personnel to be employed by a licensed dentist in his office, except that nothing in this section may be construed to allow the board by rule to provide for delegation by a licensed dentist to any such auxiliary personnel any of the duties prohibited to dental hygienists under 37-4-401 or a prophylaxis. The performance of intraoral tasks by all dental auxiliaries, as permitted by board rules, must be under the direct supervision of the licensed dentist employing the personnel.

History: En. Sec. 66-923.1 by Sec. 12, Ch. 352, L. 1969; R.C.M. 1947, 66-923.1; amd. Sec. 9, Ch. 349, L. 1983; amd. Sec. 5, Ch. 66, L. 1991.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 5
Regulatory Provisions

Part Cross-References

Montana Unfair Trade Practices and Consumer Protection Act of 1973, Title 30, ch. 14, part 1.

37-4-501. Work order for construction or repair of appliances. (1) A licensed dentist who employs or engages the services of a person, firm, or corporation to construct, reproduce, make, alter, or repair bridges, crowns, dentures, other prosthetic appliances, surgical appliances, or orthodontic appliances shall furnish the person, firm, or corporation with a written work authorization on forms prescribed by the board which shall contain:

(a) the name and address of the person, firm, or corporation to which the work authorization is directed;

(b) the patient's name or identification number, but if only a number is used the patient's name shall be written on the duplicate copy of the work authorization retained by the dentist;

(c) the date on which the work authorization was written;

(d) a description of the work to be done, including diagrams if necessary;

(e) a specification of the type and quality of the materials to be used; and

(f) the signature of the dentist and the number of his license to practice dentistry.

(2) The person, firm, or corporation receiving a work authorization from a licensed dentist shall retain the original work authorization and the dentist shall retain the duplicate copy for inspection at a reasonable time by the board for a period of 2 years from date of issuance.

History: En. Sec. 10, Ch. 48, L. 1935; re-en. Sec. 3115.10, R.C.M. 1935; amd. Sec. 2, Ch. 38, L. 1941; amd. Sec. 3, Ch. 34, L. 1961; amd. Sec. 5, Ch. 352, L. 1969; amd. Sec. 83, Ch. 350, L. 1974; R.C.M. 1947, 66-910(3).

37-4-502. Restrictions on advertising and solicitation. No person, firm, or corporation engaged in the business of constructing, altering, or repairing bridges, crowns, dentures, other prosthetic appliances, surgical appliances, or orthodontic appliances may advertise the services, technique, or materials to the general public by means of advertisements in public newspapers, magazines, or by radio, television, display advertisements, or by any other means except advertisements in professional or trade papers, trade journals, trade directories, trade periodicals, trade magazines, and listings in business and telephone directories limited to name, address, and telephone number, which may not occupy more than the number of lines necessary to disclose the information; nor may a person, firm, or corporation so engaged in any way directly solicit the patronage of the general public.

History: En. Sec. 10, Ch. 48, L. 1935; re-en. Sec. 3115.10, R.C.M. 1935; amd. Sec. 2, Ch. 38, L. 1941; amd. Sec. 3, Ch. 34, L. 1961; amd. Sec. 5, Ch. 352, L. 1969; amd. Sec. 83, Ch. 350, L. 1974; R.C.M. 1947, 66-910(5).

37-4-503. Identification of dentures. All nonmetal full dentures shall be permanently identified with the first and last name of the owner at the time of processing the dentures.

History: En. Sec. 5, Ch. 493, L. 1979.

37-4-504 through 37-4-510 reserved.

37-4-511. Limitations on the administration of general anesthetics and practices involving general anesthesia. (1) No person engaged in the practice of dentistry or oral surgery may perform any dental or surgical procedure upon another person if a general anesthetic is administered unless such anesthetic is administered and monitored by:

(a) an anesthesiologist licensed to practice medicine by the state board of medical examiners;

(b) a nurse anesthetist recognized in that specialty by the state board of nursing; or

(c) another health professional who has received at least 1 year of postgraduate training in the administration of general anesthesia.

(2) No person engaged in the practice of dentistry or oral surgery may conduct any dental or surgical procedure upon another person under full general anesthesia unless the vital signs of the patient are continually monitored by another health professional who meets the qualifications for an anesthesiologist, nurse anesthetist, or other trained health professional as provided for in subsection (1).

(3) No person engaged in the practice of dentistry or oral surgery may conduct any dental or surgical procedure upon another person under light general anesthesia unless the vital signs of the patient are continually monitored by another person who has been examined by the board or its agent in life support skills and demonstrated a satisfactory level of proficiency as established by the board.

(4) No person engaged in the practice of dentistry or oral surgery may administer a general anesthetic to any other person unless he satisfies the requirements for a person qualified to administer a general anesthetic, as provided in subsection (1), and meets any additional standards established by the board of dentistry for training in the administration of general anesthesia and in the treatment of the complications thereof. This subsection does not affect the requirements for monitoring of vital signs by another health professional under subsection (2) or (3).

(5) The facility in which general anesthesia is to be administered as part of a dental or surgical procedure must be equipped with proper drugs and equipment to safely administer anesthetic agents, to monitor the well-being of the patient under general anesthesia, and to treat the complications that may arise from general anesthesia.

History: En. Sec. 2, Ch. 518, L. 1985.

37-4-512 through 37-4-514 reserved.

37-4-515. Hospital admissions — patient histories and examinations. (1) For purposes of this section, "oral surgeon" means a dentist who has successfully completed a postgraduate program in oral surgery accredited by a nationally recognized accreditation body approved by the United States office of education.

(2) A qualified oral surgeon who is a member of the medical staff of a hospital and who admits a patient to the hospital for oral or maxillofacial surgery may take the history and perform a physical examination of the patient if the patient has no known medical problems.

(3) This section does not affect hospital staff privileges of any hospital and may not be construed to require that any specific privilege, including taking a history or performing a physical examination, be extended or not extended to any oral surgeon.

History: En. Sec. 1, Ch. 313, L. 1987.

CHAPTER 5

OSTEOPATHY

Part 1 — General

37-5-101. Definitions — practice of osteopathy.
37-5-102. Osteopathy not practice of medicine.

Part 2 — Board of Osteopathic Physicians
(Repealed. Sec. 6, Ch. 87, L. 1981)

Part 3 — Licensing

37-5-301. Qualifications for licensure — application — reexamination.
37-5-302. Examination — examination fee.
37-5-303. Reciprocity.
37-5-304. Temporary certificates.
37-5-305. Limitations on certificate — prescribing drugs — surgery.
37-5-306. Repealed.
37-5-307. Renewal fee.
37-5-308 through 37-5-310 reserved.
37-5-311. Revocation of certificate.
37-5-312. Penalty for practicing osteopathy without a license.

Chapter Cross-References

Doctor-patient privilege, 26-1-805.

Professional service corporations, Title 35, ch. 4.

General provisions relating to health care practitioners, Title 37, ch. 2.

Validity of consent to medical treatment, Title 41, ch. 1, part 4.

Osteopaths to report child abuse, 41-3-201.

Health care information, Title 50, ch. 16.

Part 1

General

37-5-101. Definitions — practice of osteopathy. (1) Unless the context requires otherwise, in this chapter the following definitions apply:

(a) "Board" means the board of medical examiners provided for in 2-15-1841.

(b) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(2) Every person is "practicing osteopathy" within the meaning of this chapter who:

(a) appends to or uses in connection with his or her name the words "doctor of osteopathy, diplomate of osteopathy, osteopath, osteopathist, osteopathic practitioner, osteopathic physician", or words of like import or any abbreviation thereof or the letters "D.O."; or

(b) professes publicly to or who, either on his own behalf, in his own name or in his trade name, or in behalf of any other person, corporation, association, partnership (as manager, bookkeeper, practitioner, or agent), treats, cures, alleviates, or relieves any ailment or disease of either mind or body or cures or relieves any fracture or misplacement or abnormal condition or bodily injury or deformity by any treatment or manipulation or method of manipulating a human body or any of its limbs, muscles, or parts by the use of the hands or mechanical appliances in an effort or attempt to relieve any pressure, obstruction, misplacement, or defect in any bone, muscle, ligament, nerve, vessel, organ, or part of the body, after having received or with the intent or expectation of receiving therefor, either directly or indirectly, any bonus, gift, or compensation whatsoever; provided, however, that nothing in this section restrains or restricts any legally licensed physician or surgeon in the practice of his profession.

History: (1)En. 66-1401.1 by Sec. 141, Ch. 350, L. 1974; Sec. 66-1401.1, R.C.M. 1947; (2)En. Sec. 12, Ch. 51, L. 1905; amd. Sec. 2, Ch. 112, L. 1907; re-en. Sec. 1605, Rev. C. 1907; re-en. Sec. 3136, R.C.M. 1921; re-en. Sec. 3136, R.C.M. 1935; Sec. 66-1412, R.C.M. 1947; R.C.M. 1947, 66-1401.1, 66-1412; amd. Sec. 4, Ch. 22, L. 1979; amd. Sec. 1, Ch. 87, L. 1981.

Cross-References

Chiropractic not practice of osteopathy, 37-12-102.

37-5-102. Osteopathy not practice of medicine. The system, method, or science of treating diseases of the human body commonly known as osteopathy is not the practice of medicine or surgery within the meaning of chapter 3, parts 1 through 3, and is not subject to the provisions of those parts.

History: En. Sec. 11, p. 51, L. 1901; rep. and re-en. Sec. 13, Ch. 51, L. 1905; re-en. Sec. 1606, Rev. C. 1907; re-en. Sec. 3137, R.C.M. 1921; re-en. Sec. 3137, R.C.M. 1935; amd. Sec. 7, Ch. 101, L. 1977; R.C.M. 1947, 66-1413; amd. Sec. 5, Ch. 22, L. 1979.

Cross-References

Exemptions from physician's licensing requirements, 37-3-103.

Part 2

Board of Osteopathic Physicians (Repealed. Sec. 6, Ch. 87, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

37-5-201. En. Sec. 2, p. 48, L. 1901; rep. and re-en. Sec. 2, Ch. 51, L. 1905; re-en. Sec. 1595, Rev. C. 1907; re-en. Sec. 3126, R.C.M. 1921; re-en. Sec. 3126, R.C.M. 1935; amd. Sec. 142, Ch. 350, L. 1974; R.C.M. 1947, 66-1402.

37-5-202. En. Sec. 10, p. 51, L. 1901; rep. and re-en. Sec. 10, Ch. 51, L. 1905; re-en. Sec. 1603, Rev. C. 1907; re-en. Sec. 3134, R.C.M. 1921; re-en. Sec. 3134, R.C.M. 1935; amd. Sec. 146, Ch. 147, L. 1963; amd. Sec. 2, Ch. 206, L. 1967; amd. Sec. 24, Ch. 93, L. 1969; amd. Sec. 146, Ch. 350, L. 1974; amd. Sec. 33, Ch. 439, L. 1975; R.C.M. 1947, 66-1410; amd. Sec. 10, Ch. 474, L. 1981.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Licensing of doctors of osteopathy, 37-3-306.

Nondiscrimination in licensing, 49-3-204.

37-5-301. Qualifications for licensure — application — reexamination. (1) It is unlawful for a person to practice osteopathy in this state without a license from the department. An applicant applying for licensure shall be a person of good moral character. An applicant shall present evidence to the board that he has completed the following educational and professional requirements:

(a) 4 years of high school or its scholastic equivalent;

(b) at least 2 years' preprofessional college education in an accredited college or university; and

(c) 4 years' professional education in an osteopathic college conforming to the minimum educational standards for osteopathic colleges established by the American osteopathic association and which is approved by the board.

(2) Application shall be made on forms prescribed by the board and furnished by the department.

(3) An applicant who fails the examination is entitled to a second examination without charge.

History: En. Sec. 3, p. 49, L. 1901; rep. and re-en. Sec. 3, Ch. 51, L. 1905; re-en. Sec. 1956, Rev. C. 1907; amd. Sec. 1, Ch. 124, L. 1919; re-en. Sec. 3127, R.C.M. 1921; amd. Sec. 1, Ch. 79, L. 1925; re-en. Sec. 3127, R.C.M. 1935; amd. Sec. 1, Ch. 108, L. 1953; amd. Sec. 1, Ch. 206, L. 1967; amd. Sec. 143, Ch. 350, L. 1974; R.C.M. 1947, 66-1403(1).

Cross-References

Standardized forms, 37-1-104.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-5-302. Examination — examination fee. (1) A person commencing the practice of osteopathy in this state, in any of its branches, shall apply to the department for a license to do so, and the applicant, at the time and place designated by the board, shall submit to an examination in the following subjects: anatomy, physiology, chemistry, pathology, bacteriology, gynecology, obstetrics, and theory and practice of osteopathy and other subjects taught in well-regulated and recognized schools of osteopathy and considered advisable by the board and shall present evidence of having actually attended, as required in 37-5-301, a legally authorized and regularly conducted school of osteopathy recognized by the board.

(2) Examination papers on subjects peculiar to osteopathy shall be graded by the department, subject to 37-1-101. The examination shall be scientific and practical, but of sufficient severity to test the candidate's fitness to practice osteopathy.

(3) After examination the department shall issue a license to practice osteopathy in this state to applicants who pass the examination, which license shall be granted by not less than two members of the board, attested by the board's seal.

(4) The fee for the examination and license shall be prescribed by the board.

History: En. Sec. 5, p. 49, L. 1901; rep. and re-en. Sec. 5, Ch. 51, L. 1905; re-en. Sec. 1598, Rev. C. 1907; re-en. Sec. 3129, R.C.M. 1921; re-en. Sec. 3129, R.C.M. 1935; amd. Sec. 2, Ch. 108, L. 1953; amd. Sec. 145, Ch. 147, L. 1963; amd. Sec. 145, Ch. 350, L. 1974; R.C.M. 1947, 66-1405; amd. Sec. 2, Ch. 87, L. 1981; amd. Sec. 10, Ch. 345, L. 1981.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-5-303. Reciprocity. A graduate of a reputable school of osteopathy who has been strictly examined and licensed to practice osteopathy in another state may be licensed to practice osteopathy in this state on production to the board of his diploma and the license obtained in the other state and satisfactory evidence of good moral character, and the payment of fees required of other applicants; but the board may have the applicant examined as to his qualifications.

History: En. Sec. 11, Ch. 51, L. 1905; re-en. Sec. 1604, Rev. C. 1907; re-en. Sec. 3135, R.C.M. 1921; re-en. Sec. 3135, R.C.M. 1935; amd. Sec. 147, Ch. 350, L. 1974; R.C.M. 1947, 66-1411.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-5-304. Temporary certificates. The secretary of the board may authorize the department, upon examination, to issue a certificate to an applicant to practice osteopathy until the next meeting of the board when he shall report the facts, at which time the temporary certificate expires, but the temporary certificate may not be issued after the board has once rejected the applicant.

History: En. Sec. 4, p. 49, L. 1901; rep. and re-en. Sec. 4, Ch. 51, L. 1905; re-en. Sec. 1597, Rev. C. 1907; re-en. Sec. 3128, R.C.M. 1921; re-en. Sec. 3128, R.C.M. 1935; amd. Sec. 144, Ch. 350, L. 1974; R.C.M. 1947, 66-1404.

37-5-305. Limitations on certificate — prescribing drugs — surgery. The certificates provided for in this chapter do not authorize the holders thereof to prescribe or use drugs in the practice of osteopathy or to perform major or operative surgery. A person holding a certificate under this chapter who prescribes or uses drugs in the practice of osteopathy or who performs major or operative surgery is guilty of a misdemeanor, provided that nothing in this chapter may be construed to prohibit any legalized osteopath in this state from practicing major or operative surgery after having passed a satisfactory examination in surgery before the Montana board of medical examiners.

History: En. Sec. 6, p. 50, L. 1901; rep. and re-en. Sec. 6, Ch. 51, L. 1905; re-en. Sec. 1599, Rev. C. 1907; re-en. Sec. 3130, R.C.M. 1921; re-en. Sec. 3130, R.C.M. 1935; amd. Sec. 6, Ch. 101, L. 1977; R.C.M. 1947, 66-1406.

Cross-References

Licensing of physicians, Title 37, ch. 3, part 3.

Penalty when no penalty specified, 46-18-212.

37-5-306. Repealed. Sec. 4, Ch. 66, L. 1981.

History: En. Sec. 7, p. 50, L. 1901; rep. and re-en. Sec. 7, Ch. 51, L. 1905; re-en. Sec. 1600, Rev. C. 1907; re-en. Sec. 3131, R.C.M. 1921; re-en. Sec. 3131, R.C.M. 1935; R.C.M. 1947, 66-1407.

37-5-307. Renewal fee. (1) A person holding a certificate to practice under this chapter and who is in active practice in this state shall before April 1 of each year pay a renewal fee prescribed by the board to the department, and a person holding a certificate to practice under this chapter who is not in active practice shall before April 1 of each year pay a renewal fee prescribed by the board to the department. The department shall before March 15 of each year send a notice to each person holding a valid certificate to practice under this chapter and from whom a fee is due stating that the fee is due.

(2) The certificate to practice under this chapter automatically becomes void when the renewal fee is not paid at the time named. However, the board may reinstate a practitioner whose certificate has lapsed on payment of back renewal fees or on payment of a maximum fee prescribed by the board if the lapsed fees exceed the maximum fee.

History: En. Sec. 3, p. 49, L. 1901; rep. and re-en. Sec. 3, Ch. 51, L. 1905; re-en. Sec. 1956, Rev. C. 1907; amd. Sec. 1, Ch. 124, L. 1919; re-en. Sec. 3127, R.C.M. 1921; amd. Sec. 1, Ch. 79, L. 1925; re-en. Sec. 3127, R.C.M. 1935; amd. Sec. 1, Ch. 108, L. 1953; amd. Sec. 1, Ch. 206, L. 1967; amd. Sec. 143, Ch. 350, L. 1974; R.C.M. 1947, 66-1403(2), (3); amd. Sec. 11, Ch. 345, L. 1981.

Cross-References

Suspension of licensing fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-5-308 through 37-5-310 reserved.

37-5-311. Revocation of certificate. Any such certificate may be revoked by said board upon satisfactory proof of fraud or misrepresentation in procuring the same or for any violation of the provisions of this chapter or any gross immorality by the holder of such certificate.

History: En. Sec. 9, p. 51, L. 1901; rep. and re-en. Sec. 9, Ch. 51, L. 1905; re-en. Sec. 1602, Rev. C. 1907; re-en. Sec. 3133, R.C.M. 1921; re-en. Sec. 3133, R.C.M. 1935; R.C.M. 1947, 66-1409.

Cross-References

Contested case procedure applicable to license revocation, 2-4-102.

Reporting disciplinary actions against licensees, 37-1-105.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-5-312. Penalty for practicing osteopathy without a license. Any person practicing osteopathy in this state without first obtaining a license herein provided for or contrary to the provisions of this chapter or who, for the purpose of obtaining such license, shall falsely represent himself or herself to be the holder of a diploma as herein provided shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $1,000 or less than $250 or by imprisonment in the county jail not exceeding 1 year or less than 90 days or by both fine and imprisonment for each and every such offense. It shall be the duty of the respective county attorneys to prosecute violations of this chapter.

History: **En. Sec. 8, p. 51, L. 1901; rep. and re-en. Sec. 8, Ch. 51, L. 1905; amd. Sec. 1, Ch. 112, L. 1907; re-en. Sec. 1601, Rev. C. 1907; re-en. Sec. 3132, R.C.M. 1921; re-en. Sec. 3132, R.C.M. 1935; R.C.M. 1947, 66-1408.**

Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

CHAPTER 6

PODIATRY

Part 1 — General

37-6-101. Definitions.
37-6-102. Scope of practice.
37-6-103. Application of chapter.
37-6-104. Construction of chapter.
37-6-105. Administration of drugs.
37-6-106. Rulemaking authority.

Part 2 — Board of Podiatry Examiners
(Repealed. Sec. 10, Ch. 470, L. 1981)

Part 3 — Licensing

37-6-301. License required for practice.
37-6-302. Qualifications for licensure — exemptions from examination — temporary licenses.
37-6-303. Examination — subjects — fees — reexamination.
37-6-304. Designations on license — recording — renewal — display.
37-6-305. Deposit of moneys collected.
37-6-306 through 37-6-309 reserved.
37-6-310. Unprofessional conduct.
37-6-311. Refusal or revocation of license — investigation — reinstatement.
37-6-312. Penalty.

Chapter Cross-References

Professional service corporations, Title 35, ch. 4.

General provisions relating to health care practitioners, Title 37, ch. 2.

Podiatrists to report child abuse, 41-3-201.

Health care information, Title 50, ch. 16.

Part 1
General

Part Cross-References

Duty of podiatrist to report violation of Montana Elder Abuse Prevention Act, 52-3-811.

37-6-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of medical examiners provided for in 2-15-1841.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Podiatrist" means a physician or surgeon of the foot, licensed to diagnose and treat ailments of the human functional foot.

(4) "Podiatry" means the diagnosis and treatment of ailments of the human functional foot as provided in 37-6-102.

History: En. Sec. 1, Ch. 2, L. 1923; re-en. Sec. 3154.1, R.C.M. 1935; amd. Sec. 1, Ch. 218, L. 1939; amd. Sec. 55, Ch. 350, L. 1974; R.C.M. 1947, 66-601; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 2, Ch. 470, L. 1981; amd. Sec. 1, Ch. 288, L. 1987; amd. Sec. 1, Ch. 484, L. 1989.

37-6-102. Scope of practice. (1) A podiatrist may diagnose and treat ailments of the human functional foot by all systems and means. The functional foot is the anatomical foot and any muscle, tendon, ligament, or other soft tissue structure that is directly attached to the anatomical foot and that impacts on or affects the foot or foot function.

(2) A podiatrist may not administer any anesthetic other than a local anesthetic.

History: En. Sec. 2, Ch. 2, L. 1923; re-en. Sec. 3154.2, R.C.M. 1935; amd. Sec. 2, Ch. 218, L. 1939; amd. Sec. 56, Ch. 350, L. 1974; R.C.M. 1947, 66-602(part); amd. Sec. 2, Ch. 288, L. 1987; amd. Sec. 2, Ch. 484, L. 1989.

37-6-103. Application of chapter. This chapter shall not apply to any physician licensed to practice his profession in this state or to surgeons of the United States army, navy, and/or public health service when in actual performance of their duties.

History: En. Sec. 10, Ch. 2, L. 1923; re-en. Sec. 3154.10, R.C.M. 1935; amd. Sec. 7, Ch. 218, L. 1939; R.C.M. 1947, 66-610.

Cross-References

Exemptions from physician's licensing requirements, 37-3-103.

37-6-104. Construction of chapter. Nothing in this chapter shall be construed as prohibiting the fitting, recommending, advertising, adjusting, or sale of corrective shoes, arch supports, or similar mechanical appliances, or foot remedies by retail dealers or manufacturers.

History: En. Sec. 8, Ch. 218, L. 1939; R.C.M. 1947, 66-611.

37-6-105. Administration of drugs. A licensed podiatrist may administer and prescribe drugs in accordance with 37-2-101 as a "medical practitioner".

History: En. Sec. 3, Ch. 470, L. 1981.

Cross-References

Dispensing of drugs, Title 37, ch. 2, part 1.

Regulation of prescriptions, Title 37, ch. 7, part 4.

Drug product selection, Title 37, ch. 7, part 5.

Dangerous drugs, Title 45, ch. 9.

Controlled substances, Title 50, ch. 32.

37-6-106. Rulemaking authority. The board may adopt rules to carry out the provisions of this chapter. Rules adopted by the board must be fair, impartial, and nondiscriminatory.

History: En. Sec. 6, Ch. 540, L. 1991.

Part 2

Board of Podiatry Examiners

(Repealed. Sec. 10, Ch. 470, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

37-6-201. En. Sec. 8, Ch. 2, L. 1923; re-en. Sec. 3154.8, R.C.M. 1935; amd. Sec. 132, Ch. 147, L. 1963; amd. Sec. 62, Ch. 350, L. 1974; amd. Sec. 27, Ch. 439, L. 1975; amd. Sec. 3, Ch. 176, L. 1977; R.C.M. 1947, 66-608; amd. Sec. 11, Ch. 474, L. 1981.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-6-301. License required for practice. It is unlawful for a person to profess to be a podiatrist, to practice or assume the duties incident to podiatry, or to advertise in any form or hold himself out to the public as a podiatrist, or in a sign or advertisement to use the word "podiatrist" or "foot correctionist" or any other term, terms, or letters indicating to the public that he is holding himself out as a podiatrist or foot correctionist in any manner, without first obtaining from the board a license authorizing the practice of podiatry in this state, except under this chapter.

History: En. Sec. 2, Ch. 2, L. 1923; re-en. Sec. 3154.2, R.C.M. 1935; amd. Sec. 2, Ch. 218, L. 1939; amd. Sec. 56, Ch. 350, L. 1974; R.C.M. 1947, 66-602(part); amd. Sec. 3, Ch. 288, L. 1987.

37-6-302. Qualifications for licensure — exemptions from examination — temporary licenses. (1) Persons who wish to begin the practice of podiatry in this state shall make application, on a form authorized by the board and furnished by the department, for a license to practice podiatry.

(2) No person may be granted a license to practice podiatry in this state unless he:

(a) is of good moral character as determined by the board;

(b) is a graduate of a school of podiatry approved by the board;

(c) has completed at least 1 year of postgraduate training or has had equivalent experience or training approved by the board;

(d) has made a personal appearance before the board;

(e) has passed an examination administered by the national board of podiatry examiners and is a diplomate of the national board of podiatry examiners; and

(f) has obtained a score of at least 75% on an examination administered by the board.

(3) The board may waive the requirements described in subsections (2)(d) and (2)(f).

(4) A license without written examination may be granted to podiatrists of other states maintaining equal statutory requirements for the practice of podiatry and extending the same reciprocal privilege to this state if they have had a valid license and practiced for at least 2 preceding years in that state prior to filing for reciprocal privilege and by payment of a fee prescribed by the board to the department.

(5) The board may authorize the department to issue a temporary license to practice podiatry in appropriate cases, but no person may be granted a temporary license unless he:

(a) is of good moral character as determined by the board;

(b) is a graduate of a school of podiatry approved by the board;

(c) has completed at least 1 year of postgraduate training or has had equivalent experience or training approved by the board; and

(d) has made a personal appearance before at least one member of the board.

(6) The board may authorize the department to issue a temporary or permanent license subject to probation or other conditions or limitations imposed by the board or may refuse to issue a license if the applicant has engaged in unprofessional conduct or is otherwise unqualified.

History: En. Sec. 3, Ch. 2, L. 1923; re-en. Sec. 3154.3, R.C.M. 1935; amd. Sec. 3, Ch. 218, L. 1939; amd. Sec. 131, Ch. 147, L. 1963; amd. Sec. 1, Ch. 168, L. 1971; amd. Sec. 1, Ch. 288, L. 1973; amd. Sec. 57, Ch. 350, L. 1974; amd. Sec. 1, Ch. 96, L. 1975; amd. Sec. 1, Ch. 176, L. 1977; R.C.M. 1947, 66-603; amd. Sec. 12, Ch. 345, L. 1981; amd. Sec. 4, Ch. 470, L. 1981; amd. Sec. 4, Ch. 288, L. 1987.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Unprofessional conduct, 37-6-310.

37-6-303. Examination — subjects — fees — reexamination. (1) A person not exempt from examination under 37-6-302 and desiring a license to practice podiatry shall be examined in the following subjects: anatomy, chemistry, dermatology, physical diagnosis, materia medica, pathology, physiology, therapeutics, orthopedics, histology, bacteriology, pharmacy, neurology, surgery, shoe therapy, physiotherapy, roentgenology, and podiatric medicine. The minimum passing score is 70% for each subject tested and an average of 75% for all subjects tested.

(2) An examination and license fee prescribed by the board shall be paid to the department.

(3) An applicant failing the examination and being refused a license is entitled within 6 months of the refusal to a reexamination, but one reexamination exhausts his privilege under the original examination. An additional fee shall be paid to the department for a reexamination.

History: **En. Sec. 4, Ch. 2, L. 1923; re-en. Sec. 3154.4, R.C.M. 1935; amd. Sec. 4, Ch. 218, L. 1939; amd. Sec. 58, Ch. 350, L. 1974; R.C.M. 1947, 66-604; amd. Sec. 13, Ch. 345, L. 1981; amd. Sec. 5, Ch. 470, L. 1981; amd. Sec. 5, Ch. 288, L. 1987.**

Cross-References

Duty of Department to administer and grade examination, 37-1-101.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-6-304. Designations on license — recording — renewal — display. (1) A license issued under this chapter is designated as a "registered podiatrist's license" or a "temporary podiatrist's license".

(2) Licenses must be recorded by the department the same as other medical licenses.

(3) Licenses must be renewed annually, on a date set by the board.

(4) A license renewal fee set by the board must be paid annually on a date set by the board.

(5) The department shall mail renewal notices no later than 60 days prior to the annual renewal date set by the board under subsection (3).

(6) If the annual renewal fee is not paid on or before the renewal date set by the board under subsection (3), the board may revoke the licensee's certificate after giving 30 days' notice to the licensee. A certified letter addressed to the delinquent licensee's last-known address as it appears on the records of the department constitutes notice of intent to revoke the certificate. No certificate may be revoked for nonpayment of a renewal fee if the licensee pays the annual renewal fee plus a penalty prescribed by the board on or before the date fixed for revocation.

(7) A license revoked for nonpayment of the annual renewal fee may be reissued only on original application and payment of an additional fee prescribed by the board.

(8) Licenses must be conspicuously displayed by podiatrists at their offices or other places of practice.

History: **En. Sec. 5, Ch. 2, L. 1923; re-en. Sec. 3154.5, R.C.M. 1935; amd. Sec. 5, Ch. 218, L. 1939; amd. Sec. 59, Ch. 350, L. 1974; amd. Sec. 3, Ch. 533, L. 1977; R.C.M. 1947, 66-605; amd. Sec. 2, Ch. 66, L. 1981; amd. Sec. 14, Ch. 345, L. 1981; amd. Sec. 6, Ch. 288, L. 1987; amd. Sec. 2, Ch. 540, L. 1991.**

Cross-References

Prohibition on distribution or sale of mailing lists, 2-6-109.

Duties of County Clerk, 7-4-2611.

Fees of County Clerk, 7-4-2631.

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-6-305. Deposit of moneys collected. All fees shall be collected by the department and deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: **En. Sec. 7, Ch. 2, L. 1923; re-en. Sec. 3154.7, R.C.M. 1935; amd. Sec. 130, Ch. 147, L. 1963; amd. Sec. 61, Ch. 350, L. 1974; amd. Sec. 1, Ch. 101, L. 1977; amd. Sec. 2, Ch. 176, L. 1977; R.C.M. 1947, 66-607; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 8, Ch. 288, L. 1987.**

37-6-306 through 37-6-309 reserved.

37-6-310. Unprofessional conduct. As used in this chapter, "unprofessional conduct" means:

(1) resorting to fraud, misrepresentation, or deception in applying for or in securing a license or in taking the examination provided for in this chapter;

(2) obtaining a fee or other compensation, either directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition of a person can be cured;

(3) willful disobedience of the rules of the board;

(4) final conviction of an offense involving moral turpitude;

(5) administering, dispensing, or prescribing a narcotic or hallucinatory drug, as defined by the federal food and drug administration or successors, otherwise than in the course of legitimate or reputable professional practice;

(6) final conviction of a violation of a federal or state law regulating the possession, distribution, or use of a narcotic or hallucinatory drug, as defined by the federal food and drug administration;

(7) habitual intemperance or excessive use of narcotic drugs, alcohol, or any other drug or substance to the extent that the use impairs the user physically or mentally;

(8) conduct unbecoming a person licensed to practice podiatry or detrimental to the best interest of the public;

(9) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution, or organization, including fraud, misrepresentation, or deception with regard to a claim for benefits under Title 39, chapter 71 or 72;

(10) testifying in court on a contingency basis;

(11) conspiring to misrepresent or willfully misrepresenting medical conditions to increase or decrease a settlement, award, verdict, or judgment;

(12) aiding or abetting in the practice of medicine a person not licensed to practice medicine or a person whose license to practice medicine is suspended;

(13) gross malpractice or negligent practice;

(14) practicing podiatry as the partner, agent, or employee of or in joint venture with a person who does not hold a license to practice podiatry within this state; however, this does not prohibit the incorporation of an individual licensee or group of licensees as a professional service corporation under Title 35, chapter 4, nor does this apply to a single consultation with or a single treatment by a person or persons licensed to practice podiatry in another state or territory of the United States or foreign country;

(15) violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate parts 1 through 3 of this chapter or the rules authorized by parts 1 through 3; or

(16) any other act, whether specifically enumerated or not, which in fact constitutes unprofessional conduct.

History: En. Sec. 9, Ch. 288, L. 1987; amd. Sec. 12, Ch. 619, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 619 in (9), at end after "organization", inserted "including fraud, misrepresentation, or deception with regard to a claim for benefits under Title 39, chapter 71 or 72". Amendment effective July 1, 1993.

37-6-311. Refusal or revocation of license — investigation — reinstatement. (1) After notice and opportunity for a hearing, the board may deny, revoke, or refuse to renew a license to practice podiatry if the consensus of the board is that an applicant is not of good moral character or has engaged in unprofessional conduct. The department shall notify the applicant of the board's intent to deny, revoke, or refuse to renew a license by mailing a letter to the applicant's last-known address stating the board's intent and setting a time and place for a hearing. If the applicant fails without cause to appear at the hearing or if the board determines that the applicant is not entitled to a license, the board shall deny, revoke, or refuse to renew the applicant's license.

(2) The board may investigate whenever it is brought to its attention that a licensed podiatrist:

(a) is mentally or physically unable to engage safely in the practice of podiatry;

(b) has procured his license by fraud, misrepresentation, or through error;

(c) has been declared incompetent by a court of competent jurisdiction and thereafter has not been lawfully declared competent;

(d) has a condition that impairs his intellect or judgment to the extent that it incapacitates him in the safe performance of his professional duties;

(e) has been found guilty of unprofessional conduct;

(f) has practiced podiatry while his license was suspended or revoked;

(g) has had his license suspended or revoked by any licensing authority for reasons other than nonpayment of fees; or

(h) while under probation has violated its terms.

(3) The investigation shall be for the purpose of determining the probability that the alleged conditions exist or that the alleged offenses were committed. The investigation may include requiring the person to submit to a physical examination or a mental examination, or both, by a physician or physicians selected by the board if it appears to be in the best interest of the public that this evaluation be secured. The board may examine the hospital records and reports of a licensee as part of the examination, and copies shall be released to the board on written request. If the board has reasonable cause to believe that the alleged conditions exist or that the alleged offenses were committed, the department shall mail to the person at his last-known address a specification of the charges against him, together with a written notice of the time and place of the hearing on such charges, advising him that he may be present in person and by counsel if he so desires to offer evidence and be heard in his defense. The time fixed for the hearing may not be less than 30 days from the date of mailing the notice.

(4) A person, including a member of the board, may file a written complaint with the department against a person having a license to practice podiatry in this state charging him with the commission of any of the offenses set forth in 37-6-310 or with any of the offenses or conditions set forth in subsection (1) or (2) of this section. The complaint shall set forth a specification of the charges. When the complaint is filed, the department shall mail a copy to the person complained against, at his last-known address, together with a written citation of the time and place of the hearing on the complaint.

(5) At the hearing the board shall adopt a resolution finding the person complained against guilty or not guilty of the matters charged. If the board finds that the offenses or conditions referred to in 37-6-310 or subsection (1)

or (2) of this section do not exist with respect to the person complained against or if he is found not guilty, the board shall dismiss the charges or complaint. If the board finds that the offenses or conditions referred to in 37-6-310 or in subsection (1) or (2) of this section do exist or the person is found guilty, the board shall:

(a) revoke his license;

(b) suspend his right to practice for a period not exceeding 1 year;

(c) suspend its judgment of revocation on the terms and conditions to be determined by the board;

(d) place him on probation; or

(e) take any other action in relation to disciplining him as the board in its discretion considers proper.

(6) In a case of revocation, suspension, or probation, the department shall enter in its records the facts of the action and of subsequent measures taken by the board with respect to that action.

(7) On the expiration of the term of suspension, the licensee shall be reinstated by the board if he furnishes the board with evidence that he is then of good moral character and conduct or restored to good health and that he has not practiced podiatry in this state during the term of suspension. If the evidence fails to establish to the satisfaction of the board that the holder is then of good moral character and conduct or restored to good health or if the evidence shows he has practiced podiatry in this state during the term of suspension, the board shall revoke the license at a hearing held in accordance with the notice and procedure provided in subsection (1). The revocation is final.

(8) If a person holding a license to practice podiatry under this chapter is by a final order or adjudication of a court of competent jurisdiction determined to be mentally incompetent, seriously mentally ill, or addicted to the use of narcotics, his license may be suspended by the board. The suspension continues until the licensee is found by the court to be restored to reason or cured or until he is discharged as restored to reason or cured and his professional competence has been proven to the satisfaction of the board.

History: En. Sec. 6, Ch. 2, L. 1923; re-en. Sec. 3154.6, R.C.M. 1935; amd. Sec. 6, Ch. 218, L. 1939; amd. Sec. 60, Ch. 350, L. 1974; R.C.M. 1947, 66-606; amd. Sec. 6, Ch. 22, L. 1979; amd. Sec. 7, Ch. 288, L. 1987; amd. Sec. 45, Ch. 83, L. 1989; amd. Sec. 3, Ch. 540, L. 1991.

Cross-References

Application of contested case procedure to denial of license, 2-4-631.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunction, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-6-312. Penalty. Any person who shall knowingly violate any of the provisions of this chapter is guilty of a misdemeanor and on conviction shall be fined not less than $250 or more than $1,000 or imprisoned in the county jail for not less than 90 days or more than 1 year, or both fined and imprisoned.

History: En. Sec. 9, Ch. 2, L. 1923; re-en. Sec. 3154.9, R.C.M. 1935; R.C.M. 1947, 66-609; amd. Sec. 6, Ch. 470, L. 1981.

CHAPTER 7

PHARMACY

Part 1 — General

37-7-101. Definitions.
37-7-102. Practice subject to regulation.
37-7-103. Exemptions.
37-7-104. Qualifications of employee hired to assist board.

Part 2 — Board of Pharmacy

37-7-201. Organization — powers and duties.
37-7-202. Salaries and expenses of board members.
37-7-203. Attorney general as board attorney — county attorney to prosecute — investigative powers of board, department, and prosecutors.
37-7-204. Posting of prescription drug prices — adoption of list by rule.

Part 3 — Licensing

37-7-301. Sale of drugs or medicines unlawful except as provided.
37-7-302. Examination — qualifications — fees — reciprocity.
37-7-303. Annual renewal fee.
37-7-304. Continuing education required.
37-7-305. Continuing education rules.
37-7-306 reserved.
37-7-307. Utilization plan — contents — responsibility of pharmacist.
37-7-308. Preparation and approval of utilization plan — revocation of or refusal to renew plan — contested case hearing.
37-7-309. Utilization plan approval fee — renewal of approval — renewal fee.
37-7-310 reserved.
37-7-311. Revocation of license issued to pharmacist or intern.
37-7-312 through 37-7-320 reserved.
37-7-321. Certified pharmacy license — suspension or revocation.
37-7-322. Use of words pharmacy, apothecary, or chemist shop for advertising.
37-7-323. Penalty — enforcement.
37-7-324. Deposit of fees and fines.

Part 4 — Prescriptions Regulated—Review—Counseling

37-7-401. Restrictions upon sale or prescription of opiates — coding prohibited — refilling prescriptions.
37-7-402. Penalty for violation of provisions on sale or prescription of opiates, coding, refilling.
37-7-403. Repealed.
37-7-404. Repealed.
37-7-405. Repealed.
37-7-406. Standards for prospective drug utilization review and patient counseling.
37-7-407. Penalty.

Part 5 — Drug Product Selection

37-7-501. Short title.
37-7-502. Definitions.
37-7-503. Rulemaking.
37-7-504. General prohibition of drug substitution.
37-7-505. Product selection permitted — limitation.
37-7-506. Notice to purchaser.
37-7-507. Savings passed on.

37-7-508. Product selection not practice of medicine.
37-7-509. Limitations on liability.
37-7-510. Penalty.

Part 6 — Wholesale Drug Distributors—Licensing

37-7-601. Scope and purpose.
37-7-602. Definitions.
37-7-603. Prohibited purchase or receipt of drugs — restrictions on wholesale drug distributors — penalty.
37-7-604. Wholesale drug distributor licensing requirements — fee — federal compliance.
37-7-605. Out-of-state wholesale drug distributor licensing requirements.
37-7-606. Issuance of licenses.
37-7-607. Qualifications for licensure — denial of license application — notice and hearing.
37-7-608. License discipline — grounds for revocation, suspension, or refusal to renew license — penalty — notice and hearing.
37-7-609. Board access to wholesale drug records.
37-7-610. Rulemaking authority.

Part 7 — Out-of-State Mail Service Pharmacies

37-7-701. Legislative declaration.
37-7-702. Out-of-state mail service pharmacy defined.
37-7-703. License requirements.
37-7-704. Inspections.
37-7-705. Product selection of prescribed drugs — notification.
37-7-706. Patient communication — telephone service.
37-7-707 through 37-7-709 reserved.
37-7-710. Discipline of registered pharmacists.
37-7-711. Penalty.

Parts 8 through 10 reserved

Part 11 — Peer Review

37-7-1101. Nonliability for peer review.

Chapter Cross-References

Professional service corporations, Title 35, ch. 4.

General provisions relating to health care practitioners, Title 37, ch. 2.

Use of diagnostic drugs by optometrist not prohibited, 37-10-103.

Dangerous drugs, Title 45, ch. 9.

Controlled substances, Title 50, ch. 32.

Part 1
General

37-7-101. Definitions. Unless the context requires otherwise, in parts 1 through 3 of this chapter, the following definitions apply:

(1) "Board" means the board of pharmacy provided for in 2-15-1843.

(2) "Chemical" means medicinal or industrial substances, whether simple, compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.

(3) "Commercial purposes" means the ordinary purposes of trade, agriculture, industry, and commerce, exclusive of the practices of medicine and pharmacy.

(4) "Continuing education" means professional pharmaceutical postgraduate education in the following areas:

(a) the socioeconomic and legal aspects of health care;

(b) the properties and actions of drugs and dosage forms; and

(c) the etiology, characteristics, and therapeutics of the disease state.

(5) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(6) (a) "Drug" means:

(i) articles recognized in the official United States Pharmacopoeia/National Formulary or a supplement to them;

(ii) articles intended for use in diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(iii) articles (other than food) intended to affect the structure or function of the body of man or other animals; and

(iv) articles intended for use as a component of an article specified in subsection (i), (ii), or (iii).

(b) "Drug" does not include devices or their components, parts, or accessories.

(7) "Intern" means a natural person licensed by the department to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons under the supervision of a registered and licensed pharmacist.

(8) "Medicine" means a remedial agent which has the property of curing, preventing, treating, or mitigating diseases or which is used for this purpose.

(9) "Person" includes an individual, partnership, corporation, or association.

(10) "Pharmacist" means a natural person licensed by the department to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons and who may affix to his name the term "R.Ph.".

(11) "Pharmacy" means an established place registered by the department of commerce in which prescriptions, drugs requiring a prescription, medicines, chemicals, and poisons are compounded, dispensed, vended, or sold.

(12) "Pharmacy technician or auxiliary" means an individual who assists a pharmacist in the practice of pharmacy pursuant to an approved utilization plan.

(13) "Poison" means a substance which, when introduced into the system, either directly or by absorption, produces violent, morbid, or fatal changes or which destroys living tissue with which it comes in contact.

(14) "Prescription" means an order given individually for the person for whom prescribed, directly from the prescriber to the furnisher or indirectly to the furnisher, by means of an order signed by the prescriber and bearing the name and address of the prescriber, his license classification, the name of the patient, the name and the quantity of the drug or drugs prescribed, the directions for use and the date of its issue. These stipulations apply to both written and telephoned prescriptions.

(15) "Utilization plan" means a plan under which a pharmacist may use the services of a pharmacy technician or auxiliary in the practice of pharmacy to perform tasks that:

(a) do not require the exercise of the pharmacist's independent professional judgment; and

(b) are verified by the pharmacist.

(16) "Wholesale" means a sale for the purpose of resale.

History: En. Sec. 2, Ch. 175, L. 1939; amd. Sec. 1, Ch. 33, L. 1951; amd. Sec. 2, Ch. 241, L. 1971; amd. Sec. 148, Ch. 350, L. 1974; amd. Sec. 1, Ch. 439, L. 1977; R.C.M. 1947, 66-1502; amd. Sec. 7, Ch. 22, L. 1979; amd. Sec. 3, Ch. 379, L. 1981; amd. Sec. 1, Ch. 247, L. 1983; amd. Sec. 1, Ch. 219, L. 1991.

37-7-102. Practice subject to regulation. The practice of pharmacy is a professional practice affecting the public health, safety, and welfare and is subject to regulation and control in the public interest.

History: En. Sec. 647, Pol. C. 1895; re-en. Sec. 1629, Rev. C. 1907; re-en. Sec. 8, Ch. 134, L. 1915; re-en. Sec. 3177, R.C.M. 1921; re-en. Sec. 3177, R.C.M. 1935; amd. Sec. 7, Ch. 175, L. 1939; amd. Sec. 1, Ch. 70, L. 1957; amd. Sec. 5, Ch. 241, L. 1971; amd. Sec. 153, Ch. 350, L. 1974; amd. Sec. 2, Ch. 439, L. 1977; R.C.M. 1947, 66-1507(part).

37-7-103. Exemptions. Subject only to 37-7-401 and 37-7-402:

(1) nothing in this chapter subjects a person duly licensed in this state to practice medicine, dentistry, or veterinary medicine to inspection by the board or prevents such person from compounding or using drugs, medicines, chemicals, or poisons in his practice or prevents one duly licensed to practice medicine from furnishing to a patient drugs, medicines, chemicals, or poisons as he considers proper in the treatment of the patient;

(2) nothing in this chapter prevents the sale of drugs, medicines, chemicals, or poisons at wholesale;

(3) nothing in this chapter prevents the sale of drugs, chemicals, or poisons either at wholesale or retail for use for commercial purposes or in the arts or changes any of the provisions of this code relating to the sale of insecticides and fungicides, and nothing in this chapter prevents the sale of common household preparations and other drugs, provided stores selling them are licensed under the terms of this chapter;

(4) nothing in this chapter applies to or may interfere with manufacture, wholesaling, vending, or retailing of flavoring extracts, toilet articles, cosmetics, perfumes, spices, and other commonly used household articles of a chemical nature for use for nonmedicinal purposes;

(5) nothing in this chapter prevents a registered nurse employed by a family planning clinic under contract with the department of health and environmental sciences from dispensing factory prepackaged oral contraceptives if the dispensing is in accordance with a physician's written protocol specifying the circumstances under which dispensing is appropriate and with the board of pharmacy's requirements for labeling, storage, and recordkeeping of drugs.

History: En. Sec. 14, Ch. 175, L. 1939; amd. Sec. 10, Ch. 101, L. 1977; R.C.M. 1947, 66-1525; amd. Sec. 2, Ch. 472, L. 1989.

Cross-References

Licensing of physicians, Title 37, ch. 3, part 3.

Licensing of dentists, Title 37, ch. 4, part 3.

Licensing — veterinary medicine, Title 37, ch. 18, part 3.

Pesticides, Title 80, ch. 8.

37-7-104. Qualifications of employee hired to assist board. A person hired by the department to enter and inspect an establishment under this chapter; to examine the books of a manufacturer, druggist, storekeeper, wholesaler, pharmacist, or intern; to assist in a prosecution under this chapter; and to assist the board in supervising internships, reciprocity agreements, professional correspondence, and examinations shall be:

(1) a citizen of the United States and a resident of this state; and

(2) a pharmacist registered under this chapter, with at least 5 years of practical experience.

History: En. 66-1521.1 by Sec. 158, Ch. 350, L. 1974; R.C.M. 1947, 66-1521.1; amd. Sec. 8, Ch. 22, L. 1979.

Cross-References

Duties of Department, 37-1-101.

Part 2
Board of Pharmacy

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1843.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-7-201. Organization — powers and duties. (1) The board shall meet at least once a year to transact its business. The board shall annually elect from its members a president, vice-president, and secretary.

(2) The board shall:

(a) regulate the practice of pharmacy in this state subject to this chapter;

(b) determine the minimum equipment necessary in and for a pharmacy;

(c) regulate, under therapeutic classification, the sale of drugs, medicines, chemicals, and poisons and their labeling;

(d) regulate the quality of drugs and medicines dispensed in this state, using the United States Pharmacopoeia/National Formulary or revisions thereof as the standards;

(e) request the department to enter and inspect, at reasonable times, places where drugs, medicines, chemicals, or poisons are sold, vended, given away, compounded, dispensed, or manufactured. It is a misdemeanor for a person to refuse to permit or otherwise prevent the department from entering these places and making an inspection.

(f) regulate the practice of interns under national standards;

(g) make rules for the conduct of its business;

(h) perform other duties and exercise other powers as this chapter requires;

(i) adopt and authorize the department to publish rules for carrying out and enforcing parts 1 through 3 of this chapter.

(3) The department shall:

(a) license, register, and examine, subject to 37-1-101, applicants whom the board considers qualified under this chapter;

(b) license pharmacies and certain stores under this chapter;

(c) license wholesale drug distributors;

(d) issue certificates of "certified pharmacy" under this chapter; and

(e) establish and collect license fees.

History: Ap. p. Sec. 644, Pol. C. 1895; re-en. Sec. 1626, Rev. C. 1907; re-en. Sec. 5, Ch. 134, L. 1915; re-en. Sec. 3174, R.C.M. 1921; re-en. Sec. 3174, R.C.M. 1935; amd. Sec. 4, Ch. 175, L. 1939; amd. Sec. 25, Ch. 93, L. 1969; amd. Sec. 3, Ch. 241, L. 1971; amd. Sec. 150, Ch. 350, L. 1974; Sec. 66-1504, R.C.M. 1947; Ap. p. Sec. 646, Pol. C. 1895; re-en. Sec. 1628,

Rev. C. 1907; re-en. Sec. 7, Ch. 134, L. 1915; re-en. Sec. 3176, R.C.M. 1921; re-en. Sec. 3176, R.C.M. 1935; amd. Sec. 6, Ch. 175, L. 1939; amd. Sec. 1, Ch. 81, L. 1969; amd. Sec. 4, Ch. 168, L. 1971; amd. Sec. 4, Ch. 241, L. 1971; amd. Sec. 1, Ch. 71, L. 1974; amd. Sec. 152, Ch. 350, L. 1974; amd. Sec. 7, Ch. 533, L. 1977; Sec. 66-1506, R.C.M. 1947; R.C.M. 1947, 66-1504(1), (2)(a) thru (2)(f), (2)(h) thru (2)(j), (3), 66-1506(part); amd. Sec. 4, Ch. 379, L. 1981; amd. Sec. 1, Ch. 134, L. 1991.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Duty of Department to provide facilities and keep records, 37-1-101.

Duties of boards, 37-1-131.

Disrupting meeting as disorderly conduct, 45-8-101.

37-7-202. Salaries and expenses of board members. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 645, Pol. C. 1895; re-en. Sec. 1627, Rev. C. 1907; re-en. Sec. 6, Ch. 134, L. 1915; re-en. Sec. 3175, R.C.M. 1921; re-en. Sec. 3175, R.C.M. 1935; amd. Sec. 5, Ch. 175, L. 1939; amd. Sec. 26, Ch. 177, L. 1965; amd. Sec. 1, Ch. 82, L. 1969; amd. Sec. 1, Ch. 72, L. 1974; amd. Sec. 151, Ch. 350, L. 1974; amd. Sec. 34, Ch. 439, L. 1975; R.C.M. 1947, 66-1505; amd. Sec. 12, Ch. 474, L. 1981.

37-7-203. Attorney general as board attorney — county attorney to prosecute — investigative powers of board, department, and prosecutors. (1) The attorney general is the attorney for the board. The department shall, under rules adopted by the board, assist the board and the attorney general in the administration and enforcement of parts 1 through 4 of this chapter.

(2) The county attorney of a county in which an offense under parts 1 through 4 of this chapter is committed shall prosecute the offender.

(3) The board, the department, or the county attorney may examine the books of a manufacturer, druggist, storekeeper, wholesale dealer, pharmacist, intern, or pharmacy in this state for the purpose of acquiring information to aid in prosecutions under parts 1 through 4 of this chapter.

History: En. Sec. 4, Ch. 104, L. 1931; re-en. Sec. 3202.10, R.C.M. 1935; amd. Sec. 10, Ch. 175, L. 1939; amd. Sec. 8, Ch. 241, L. 1971; amd. Sec. 157, Ch. 350, L. 1974; R.C.M. 1947, 66-1521.

Cross-References

Duties of Attorney General, 2-15-501.

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relative to state matters, 7-4-2716.

37-7-204. Posting of prescription drug prices — adoption of list by rule. If the board of pharmacy finds after a public hearing that the interests of consumers will be furthered by its action, the board shall annually adopt by rule a list of 20 prescription drugs frequently prescribed for outpatient dispensing in Montana. A licensed pharmacy, other than in a hospital or nursing home, that sells prescription drugs shall monthly post its prices for the drugs on the list adopted by the board. The list must show the drugs by brand name and retail price and by generic name and retail price.

History: En. Sec. 1, Ch. 307, L. 1993.

Part 3
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-7-301. Sale of drugs or medicines unlawful except as provided. Except as provided in 37-7-307 through 37-7-309, it is unlawful for a:

(1) person to compound, dispense, vend, or sell at retail drugs, medicines, chemicals, or poisons in any place other than a pharmacy, except as hereinafter provided;

(2) proprietor, owner, or manager of a pharmacy or any other person to permit the compounding or dispensing of prescriptions or the vending or selling at retail of drugs, medicines, chemicals, or poisons in any pharmacy except by a registered and licensed pharmacist or by an intern registered and licensed by the department and under the supervision of a registered and licensed pharmacist;

(3) person to assume or pretend to the title of pharmacist or intern unless the person has a license as such, issued and in force pursuant to parts 1 through 3 of this chapter;

(4) person other than a licensed and registered pharmacist or a licensed and registered intern under the supervision of a licensed and registered pharmacist to compound, dispense, vend, or sell at retail drugs, medicines, chemicals, or poisons except as provided in parts 1 through 3.

History: En. Sec. 640, Pol. C. 1895; re-en. Sec. 1622, Rev. C. 1907; re-en. Sec. 1, Ch. 134, L. 1915; re-en. Sec. 3170, R.C.M. 1921; re-en. Sec. 3170, R.C.M. 1935; amd. Sec. 1, Ch. 175, L. 1939; amd. Sec. 1, Ch. 241, L. 1971; R.C.M. 1947, 66-1501; amd. Sec. 9, Ch. 22, L. 1979; amd. Sec. 5, Ch. 379, L. 1981; amd. Sec. 2, Ch. 219, L. 1991.

37-7-302. Examination — qualifications — fees — reciprocity. (1) The department shall give reasonable notice of examinations by mail to known applicants. The department shall record the names of persons examined, together with the grounds on which the right of each to examination was claimed, and also the names of persons registered by examination or otherwise.

(2) The fee for an examination shall be set by the board at a figure commensurate with costs, which fee may in the discretion of the board be returned to applicants not taking the examination.

(3) To be entitled to examination as a pharmacist, the applicant shall be of good moral character and shall have graduated and received the first professional undergraduate degree from the school of pharmacy of the university of Montana or from an accredited pharmacy degree program that has been approved by the board. However, no applicant may receive a registered pharmacist's license until he has complied with the internship requirements established by the board.

(4) The board may in its discretion authorize the department to grant registration without examination to a pharmacist licensed by a board of pharmacy or a similar board of another state which accords similar recogni-

tion to licensees of this state if the requirements for registration in the other state are, in the opinion of the board, equivalent to the requirements of this chapter. The fee for registration by reciprocity shall be prescribed by the board.

(5) Every person licensed and registered under this chapter shall receive from the department an appropriate certificate attesting the fact, which shall be conspicuously displayed at all times in his place of business.

History: En. Sec. 646, Pol. C. 1895; re-en. Sec. 1628, Rev. C. 1907; re-en. Sec. 7, Ch. 134, L. 1915; re-en. Sec. 3176, R.C.M. 1921; re-en. Sec. 3176, R.C.M. 1935; amd. Sec. 6, Ch. 175, L. 1939; amd. Sec. 1, Ch. 81, L. 1969; amd. Sec. 4, Ch. 168, L. 1971; amd. Sec. 4, Ch. 241, L. 1971; amd. Sec. 1, Ch. 71, L. 1974; amd. Sec. 152, Ch. 350, L. 1974; amd. Sec. 7, Ch. 533, L. 1977; R.C.M. 1947, 66-1506(part); amd. Sec. 2, Ch. 341, L. 1981; amd. Sec. 15, Ch. 345, L. 1981; amd. Sec. 6, Ch. 379, L. 1981; amd. Sec. 3, Ch. 247, L. 1983.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Duty of Department to grade examinations, 37-1-101.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

License not required for sale of pesticides, 80-8-207.

37-7-303. Annual renewal fee. (1) A person licensed and registered by the department shall annually pay to the department before June 30 a renewal of registration fee prescribed by the board. A default in the payment of a renewal fee after the date it is due increases the renewal fee as prescribed by the board. It is unlawful for a person who refuses or fails to pay the renewal fee to practice pharmacy in this state. A certificate and renewal expires at the time prescribed, not later than 1 year from its date. A defaulter in a renewal fee may be reinstated within 1 year of the default without examination on payment of the arrears and compliance with the continuing education provisions of this chapter.

(2) The board may charge an additional fee for such license renewal to be used in administering the continuing education provisions of this chapter.

History: En. Sec. 647, Pol. C. 1895; re-en. Sec. 1629, Rev. C. 1907; re-en. Sec. 8, Ch. 134, L. 1915; re-en. Sec. 3177, R.C.M. 1921; re-en. Sec. 3177, R.C.M. 1935; amd. Sec. 7, Ch. 175, L. 1939; amd. Sec. 1, Ch. 70, L. 1957; amd. Sec. 5, Ch. 241, L. 1971; amd. Sec. 153, Ch. 350, L. 1974; amd. Sec. 2, Ch. 439, L. 1977; R.C.M. 1947, 66-1507(part); amd. Sec. 16, Ch. 345, L. 1981; amd. Sec. 7, Ch. 379, L. 1981.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-7-304. Continuing education required. (1) After July 1, 1979, no pharmacist's license may be renewed unless the pharmacist has certified, upon a form prescribed by the board, that he has obtained the number of hours of approved continuing education required by the board.

(2) Upon adequate demonstration of good cause for having failed to obtain the required number of continuing education hours through attendance of regularly accredited programs, the board shall renew the license of a pharmacist who has completed an alternative program of compliance prescribed by the board. Alternative programs shall insure competency essentially equivalent to that gained through regularly accredited continuing education

programs and may include home study courses, examinations, or any other program prescribed by the board.

History: En. 66-1507.1 by Sec. 3, Ch. 439, L. 1977; R.C.M. 1947, 66-1507.1.

37-7-305. Continuing education rules. The board shall adopt rules for the proper administration of the continuing education provisions of this chapter, including but not limited to:

(1) determinations as to accredited programs;

(2) the number of hours of continuing education required for license renewal; and

(3) alternative methods for fulfilling continuing education requirements as prescribed in 37-7-304(2).

History: En. 66-1507.2 by Sec. 4, Ch. 439, L. 1977; R.C.M. 1947, 66-1507.2.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-7-306 reserved.

37-7-307. Utilization plan — contents — responsibility of pharmacist. (1) A utilization plan must set forth:

(a) the name and qualifications of the supervising pharmacist or pharmacists;

(b) the nature and location of the supervising pharmacist's pharmacy practice;

(c) a summary of the tasks delegated by the pharmacist and the methods by which a supervising pharmacist may verify and document the tasks. "Verify" means the personal confirmation by a supervising pharmacist of the correctness of the tasks undertaken by the pharmacy technician.

(d) any other information the board considers relevant.

(2) The board shall approve a utilization plan if it determines that the duties to be delegated are:

(a) assigned, verified, and documented by the supervising pharmacist; and

(b) within the scope of the training and competence of the person to whom the authority is delegated.

(3) A supervising pharmacist is responsible for the actions of a pharmacy technician or auxiliary who performs services for the pharmacist under the terms of a utilization plan.

History: En. Sec. 3, Ch. 219, L. 1991.

37-7-308. Preparation and approval of utilization plan — revocation of or refusal to renew plan — contested case hearing. (1) A supervising pharmacist shall:

(a) prepare the utilization plan and submit a summary of the plan to the board for approval;

(b) keep on file in the pharmacy a copy of the utilization plan for inspection by the board; and

(c) annually review the utilization plan and provide documentation to the board that the plan accurately reflects the current use of the services of a pharmacy technician or auxiliary.

(2) The board shall refuse to approve or shall revoke or fail to renew approval of a utilization plan if it does not conform to the provisions of 37-7-307 through 37-7-309 and rules adopted under those sections.

(3) One year after the board revokes approval of a utilization plan, the supervising pharmacist may reapply for approval by complying with the requirements of 37-7-307 through 37-7-309 and with rules adopted under those sections.

(4) Before refusing to approve or before revoking or failing to renew approval of a utilization plan, the board shall provide the supervising pharmacist a reasonable time in which to supply additional information demonstrating compliance with the requirements of 37-7-307 through 37-7-309 and with rules adopted under those sections and the opportunity to request a hearing.

(5) If a supervising pharmacist requests a hearing, the board shall conduct the hearing in accordance with the contested case procedures in Title 2, chapter 4, part 6.

History: En. Sec. 4, Ch. 219, L. 1991.

37-7-309. Utilization plan approval fee — renewal of approval — renewal fee. (1) A pharmacy in which a pharmacist uses the services of a pharmacy technician or auxiliary under an approved utilization plan shall pay to the board a utilization plan approval fee in an amount set by the board as provided in 37-1-134. Payment must be made when the utilization plan is submitted and is not refundable.

(2) Approval of a utilization plan expires 1 year from the date of approval. The board shall grant renewal of approval upon payment of a renewal fee in an amount set by the board and documentation as required by 37-7-308(1)(c).

(3) The board may adopt fees, as provided in 37-1-134, for other costs associated with implementation of 37-7-307 through 37-7-309, including the costs of onsite inspection of the utilization plan at the participating pharmacy.

(4) The board shall deposit fees received in the state special revenue fund for use by the board in administration of 37-7-307 through 37-7-309, subject to 37-1-101(6).

History: En. Sec. 5, Ch. 219, L. 1991.

37-7-310 reserved.

37-7-311. Revocation of license issued to pharmacist or intern. The board shall revoke licenses issued by the department to a pharmacist or intern whenever the holder of the license:

(1) has obtained it by false representations or fraud;

(2) is an habitual drunkard or addicted to the use of narcotic drugs;

(3) has been convicted of violating the Federal Food, Drug, and Cosmetic Act (Title 21, chapter 9, U.S.C.); chapter 2 or 7 of Title 37, chapter 9 or 10 of Title 45, or chapter 31 or 32 of Title 50, MCA; or rules adopted under such act or chapters; or

(4) has been found by the board guilty of incompetency in the preparation of prescriptions or guilty of gross immorality affecting the discharge of his duties as a pharmacist or intern.

History: En. Sec. 644, Pol. C. 1895; re-en. Sec. 1626, Rev. C. 1907; re-en. Sec. 5, Ch. 134, L. 1915; re-en. Sec. 3174, R.C.M. 1921; re-en. Sec. 3174, R.C.M. 1935; amd. Sec. 4, Ch.

175, L. 1939; amd. Sec. 25, Ch. 93, L. 1969; amd. Sec. 3, Ch. 241, L. 1971; amd. Sec. 150, Ch. 350, L. 1974; R.C.M. 1947, 66-1504(2)(g); amd. Sec. 10, Ch. 22, L. 1979; amd. Sec. 4, Ch. 362, L. 1981; amd. Sec. 8, Ch. 379, L. 1981; amd. Sec. 4, Ch. 247, L. 1983.

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-7-312 through 37-7-320 reserved.

37-7-321. Certified pharmacy license — suspension or revocation. (1) The board shall provide for the original certification and annual renewal by the department of every pharmacy doing business in this state. On presentation of evidence satisfactory to the board and on application on a form prescribed by the board and on the payment of an original certification fee prescribed by the board, the department shall issue a license to a pharmacy as a certified pharmacy. However, the license may be granted only to pharmacies operated by registered pharmacists qualified under this chapter. The annual renewal fee for a pharmacy shall be set by the board. Any default in the payment of such renewal fee after the date the same is due shall increase the renewal fee as prescribed by the board. The license must be displayed in a conspicuous place in the pharmacy for which it is issued and expires on June 30 following the date of issue. It is unlawful for a person to conduct a pharmacy, use the word "pharmacy" to identify his business, or use the word "pharmacy" in advertising unless a license has been issued and is in effect.

(2) The board may suspend, revoke, or refuse to renew a pharmacy license:

(a) obtained by false representation or fraud;

(b) when the pharmacy for which the license is issued is kept open for the transaction of business without a pharmacist in charge;

(c) when the person to whom the license is granted has been convicted of:

(i) a violation of parts 1 through 3 of this chapter; or

(ii) a violation of the Federal Food, Drug, and Cosmetic Act (Title 21, chapter 9, U.S.C.); chapter 2 or 7 of Title 37, chapter 9 or 10 of Title 45, or chapter 31 or 32 of Title 50, MCA; or rules adopted under such act or chapters;

(d) when the person to whom the license is granted is a natural person whose pharmacist license has been revoked; or

(e) when the pharmacy is conducted in violation of parts 1 through 3 of this chapter.

(3) Before a license can be revoked, the holder is entitled to a hearing by the board.

History: En. Sec. 8, Ch. 175, L. 1939; amd. Sec. 1, Ch. 76, L. 1959; amd. Sec. 1, Ch. 9, L. 1967; amd. Sec. 1, Ch. 80, L. 1969; amd. Sec. 6, Ch. 241, L. 1971; amd. Sec. 1, Ch. 308, L. 1974; amd. Sec. 154, Ch. 350, L. 1974; amd. Sec. 8, Ch. 533, L. 1977; R.C.M. 1947, 66-1508; amd. Sec. 17, Ch. 345, L. 1981; amd. Sec. 5, Ch. 362, L. 1981; amd. Sec. 9, Ch. 379, L. 1981; amd. Sec. 5, Ch. 247, L. 1983.

Cross-References

Contested case procedure applicable to revocation of licenses, 2-4-631.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Disciplinary authority of boards — injunctions, 37-1-136.

37-7-322. Use of words pharmacy, apothecary, or chemist shop for advertising. It is unlawful for a person to carry on, conduct, or transact a retail business under a name which contains as a part thereof the words "pharmacy", "apothecary", or "chemist shop" or any abbreviation, translation, extension, or variation thereof or in any manner by advertisement circular or poster, sign, or otherwise to describe or refer to the place of business conducted by that person by such term, abbreviation, translation, extension, or variation unless the place so conducted is a pharmacy within the meaning of this chapter and duly licensed as such and in the charge of a registered pharmacist.

History: En. Sec. 11, Ch. 175, L. 1939; amd. Sec. 9, Ch. 101, L. 1977; R.C.M. 1947, 66-1522.

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

37-7-323. Penalty — enforcement. (1) A person, firm, partnership, or corporation violating any of the provisions of parts 1 through 3 of this chapter is guilty of a misdemeanor and upon conviction for each violation shall be punished accordingly and shall automatically lose any license issued by the board.

(2) In addition to the penalty provided in subsection (1), the board may withdraw its approval of a utilization plan previously approved for a supervising pharmacist who:

(a) violates any provision of 37-7-307 through 37-7-309 or rules adopted under those sections;

(b) obtained the approval of the utilization plan through fraud; or

(c) acts in a manner contrary to the terms of the utilization plan.

(3) The board may seek an injunction to enforce the provisions of subsection (2).

History: En. Sec. 5, Ch. 104, L. 1931; re-en. Sec. 3202.11, R.C.M. 1935; amd. Sec. 15, Ch. 175, L. 1939; R.C.M. 1947, 66-1526; amd. Sec. 6, Ch. 219, L. 1991.

Cross-References

Disciplinary authority of boards — injunctions, 37-1-136.

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Misdemeanor penalty when no penalty specified, 46-18-212.

Fines in felony and misdemeanor cases, 46-18-231.

37-7-324. Deposit of fees and fines. Fines paid under this chapter, except those paid to a justice's court, and fees collected by the department for registration and licenses issued under this chapter shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 6, Ch. 104, L. 1931; re-en. Sec. 3202.12, R.C.M. 1935; amd. Sec. 16, Ch. 175, L. 1939; amd. Sec. 134, Ch. 147, L. 1963; amd. Sec. 159, Ch. 350, L. 1974; R.C.M. 1947, 66-1527; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 23, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Part 4

Prescriptions Regulated — Review — Counseling

Part Cross-References

Dispensing of drugs, Title 37, ch. 2, part 1.

Dangerous drugs, Title 45, ch. 9.

Controlled substances, Title 50, ch. 32.

37-7-401. Restrictions upon sale or prescription of opiates — coding prohibited — refilling prescriptions. (1) It is unlawful for any physician, physician assistant-certified, or nurse specialist to sell or give to or prescribe for any person any opium, morphine, alkaloid-cocaine, or alpha or beta eucaine or codeine or heroin or any derivative, mixture, or preparation of any of them, except to a patient believed in good faith to require the same for medical use and in quantities proportioned to the needs of the patient.

(2) A prescription must be written so that it can be compounded by any registered pharmacist. The coding of any prescription is a violation of this section.

(3) A prescription marked "non repetatur", "non rep", or "N.R." cannot be refilled. A prescription marked to be refilled by a specified amount may be filled by any registered pharmacist the number of times marked on the prescription. A prescription not bearing any refill instructions may not be refilled without first obtaining permission from the prescriber. A prescription may not be refilled for more than 3 years from the date it was originally filled. A narcotic prescription may not be refilled.

History: En. Sec. 2, Ch. 11, L. 1911; re-en. Sec. 3187, R.C.M. 1921; re-en. Sec. 3187, R.C.M. 1935; amd. Sec. 2, Ch. 33, L. 1951; R.C.M. 1947, 66-1514; amd. Sec. 10, Ch. 379, L. 1981; amd. Sec. 17, Ch. 97, L. 1989; amd. Sec. 2, Ch. 444, L. 1989.

37-7-402. Penalty for violation of provisions on sale or prescription of opiates, coding, refilling. Any person found guilty of the violation of 37-7-401 shall be punished for each separate offense (and each and every individual case shall constitute a separate offense) by a fine of not less than $50 or more than $500 or by imprisonment in the county jail for a period of not less than 60 days or more than 100 days or by both such fine and imprisonment.

History: En. Sec. 3, Ch. 11, L. 1911; re-en. Sec. 3188, R.C.M. 1921; re-en. Sec. 3188, R.C.M. 1935; R.C.M. 1947, 66-1515.

Cross-References

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Fines in felony and misdemeanor cases, 46-18-231.

37-7-403. Repealed. Sec. 8, Ch. 247, L. 1983.

History: En. Sec. 1, Ch. 11, L. 1935; re-en. Sec. 3185.1, R.C.M. 1935; amd. Sec. 155, Ch. 350, L. 1974; R.C.M. 1947, 66-1511.

37-7-404. Repealed. Sec. 8, Ch. 247, L. 1983.

History: **En. Sec. 2, Ch. 11, L. 1935; re-en. Sec. 3185.2, R.C.M. 1935; amd. Sec. 156, Ch. 350, L. 1974; R.C.M. 1947, 66-1512.**

37-7-405. Repealed. Sec. 8, Ch. 247, L. 1983.

History: **En. Sec. 3, Ch. 11, L. 1935; re-en. Sec. 3185.3. R.C.M. 1935; R.C.M. 1947, 66-1513.**

37-7-406. Standards for prospective drug utilization review and patient counseling. (1) The board may by rule set standards for the provision of prospective drug utilization review information from a pharmacist to a patient before a prescription is dispensed to the patient or his representative. The review may include, when applicable, an appropriate level of screening for potential drug therapy problems due to therapeutic duplication, drug disease contraindications, drug interactions, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse or misuse. The sources for the standards must be nationally recognized compendia as the board may designate.

(2) Under the standards provided for in this section, the pharmacist should offer to discuss those matters that, in his professional judgment, he considers significant to the patient's safe and proper use of the prescribed drug. The counseling should encompass the topics set forth in 42 U.S.C. 1396r-8 of the Social Security Act.

(3) Communications between a pharmacist and a patient pursuant to the standards provided for in this section constitute health care information for the purposes of Title 50, chapter 16, part 5.

(4) Standards established by the board under this section apply to all patients seen by a pharmacist or to categories of patients as the board may designate. However, standards provided for in this section may not apply to inpatients of a health care facility in which a nurse or other licensed health care professional is authorized to administer the prescribed drug.

History: **En. Sec. 1, Ch. 664, L. 1991.**

37-7-407. Penalty. In addition to all other penalties provided by law, a person violating 37-7-406 shall be fined not more than $250 for each violation.

History: **En. Sec. 8, Ch. 664, L. 1991.**

Part 5

Drug Product Selection

37-7-501. Short title. This part may be cited as the "Montana Drug Product Selection Act".

History: **En. 66-1528 by Sec. 1, Ch. 403, L. 1977; R.C.M. 1947, 66-1528.**

37-7-502. Definitions. As used in this part, the following definitions apply:

(1) "Bioavailability" means the extent and rate of absorption from a dosage form as reflected by the time-concentration curve of the administered drug in the systemic circulation.

(2) "Bioequivalent" means a chemical equivalent which, when administered to the same individual in the same dosage regimen, will result in comparable bioavailability.

(3) "Brand name" means the proprietary or the registered trademark name given to a drug product by its manufacturer, labeler, or distributor and placed upon the drug, its container, label, or wrapping at the time of packaging.

(4) "Chemical equivalent" means drug products that contain the same amounts of the same therapeutically active ingredients in the same dosage forms and that meet present compendium standards.

(5) "Drug product" means a dosage form containing one or more active therapeutic ingredients along with other substances included during the manufacturing process.

(6) "Generic name" means the chemical or established name of a drug product or drug ingredient published in the latest edition of the official United States Pharmacopoeia/National Formulary.

(7) "Person" means an individual, firm, partnership, association, corporation, or any other entity, whether organized for profit or not.

(8) "Prescriber" means a practitioner licensed under the professional laws of the state to administer medicine and drugs.

(9) "Present compendium standard" means the official standard for drug excipients and drug products listed in the latest revision of the United States Pharmacopoeia/National Formulary.

(10) "Product selection" means to dispense without the prescriber's express authorization a different drug product in place of the drug product prescribed.

(11) "Therapeutically equivalent" means those chemical equivalents which, when administered in the same dosage regimen, will provide essentially the same therapeutic effect as measured by the control of a symptom or a disease and/or toxicity.

History: En. 66-1529 by Sec. 2, Ch. 403, L. 1977; R.C.M. 1947, 66-1529; amd. Sec. 11, Ch. 379, L. 1981.

37-7-503. Rulemaking. The board of pharmacy may adopt, amend, or repeal rules necessary for the implementation, continuation, and enforcement of this part in accordance with the Montana Administrative Procedure Act.

History: En. 66-1535 by Sec. 8, Ch. 403, L. 1977; R.C.M. 1947, 66-1535; amd. Sec. 1, Ch. 247, L. 1983.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

37-7-504. General prohibition of drug substitution. No person may substitute a drug different from the one ordered or deviate in any manner from the requirements of an order or prescription, except as provided in this part.

History: En. 66-1523(2) by Sec. 10, Ch. 403, L. 1977; R.C.M. 1947, 66-1523.

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

37-7-505. Product selection permitted — limitation. (1) Except as limited by subsection (2) of this section and unless instructed otherwise by the purchaser, the pharmacist who receives a written or oral prescription for a specific drug product by brand or proprietary name may select a less expensive drug product with the same generic name, the same strength, quantity, dose, and dosage form as the prescribed drug which is, in the pharmacist's professional opinion, therapeutically equivalent, bioequivalent, and bioavailable.

(2) If, in the professional opinion of the prescriber, it is medically necessary for his patient that an equivalent drug product not be selected, the prescriber may so indicate by certifying that in his professional judgment the specific brand-name drug product is medically necessary for that particular patient. In the case of a prescription transmitted orally, the prescriber must expressly indicate to the pharmacist that the brand-name drug product prescribed is medically necessary.

History: En. 66-1530 by Sec. 3, Ch. 403, L. 1977; R.C.M. 1947, 66-1530.

37-7-506. Notice to purchaser. (1) A pharmacist who selects a drug product as provided in 37-7-505 shall notify the person presenting the prescription that he may refuse the product selection as provided in 37-7-505.

(2) Each pharmacy shall display in a prominent place that is in clear and unobstructed public view, at or near the place where prescriptions are dispensed, a sign stating: "This pharmacy may be able to select a less expensive drug product which is equivalent to the one prescribed by your physician unless you or your physician request otherwise." The printing on the sign shall be in block letters not less than 1 inch in height.

History: En. 66-1531 by Sec. 4, Ch. 403, L. 1977; R.C.M. 1947, 66-1531.

37-7-507. Savings passed on. (1) A pharmacist selecting a less expensive drug product must pass on to the purchaser the full amount of the savings realized by the product selection. In no event may the pharmacist charge a different professional fee for dispensing a different drug product than the drug product originally prescribed.

(2) If the prescriber prescribes a drug product by its generic name, the pharmacist must, consistent with reasonable judgment, dispense the lowest retail priced, therapeutically equivalent brand which is in stock.

History: En. 66-1532 by Sec. 5, Ch. 403, L. 1977; R.C.M. 1947, 66-1532.

37-7-508. Product selection not practice of medicine. The selection of a drug product by a registered pharmacist under the provisions of this part does not constitute the practice of medicine.

History: En. 66-1533 by Sec. 6, Ch. 403, L. 1977; R.C.M. 1947, 66-1533.

Cross-References

Exemption from physician's licensing requirements, 37-3-103.

37-7-509. Limitations on liability. (1) A pharmacist making a product selection under the provisions of this part assumes no greater responsibility for selecting the dispensed drug product than he would incur in filling a prescription for a drug product prescribed by a generic name.

(2) When a pharmacist selects a drug product, the prescriber may not be held liable in an action for loss, damage, injury, or death to a person caused by the use of the selected drug product, except that if the original drug product was incorrectly prescribed, the prescriber is not relieved of liability.

History: En. 66-1534 by Sec. 7, Ch. 403, L. 1977; R.C.M. 1947, 66-1534.

Cross-References

Availability of remedies — liability, Title 27, ch. 1.

Montana Medical Legal Panel Act, Title 27, ch. 6.

37-7-510. Penalty. (1) In addition to all other penalties provided by law, a person who violates the provisions of 37-7-505, 37-7-506, or 37-7-507 or any rule promulgated as provided in 37-7-503 shall be fined no more than $250 for each violation.

(2) The penalty imposed under this part may be remitted or mitigated upon such terms and conditions as the board of pharmacy considers proper and consistent with the public health and safety.

(3) A civil penalty imposed under this part becomes due and payable when the person incurring the penalty receives a notice in writing from the board of pharmacy. The notice shall be sent by registered or certified mail and must include:

(a) reference to the particular sections of the statute or rule;

(b) a short and plain statement of the matters asserted as charged;

(c) a statement of the amount of the penalty or penalties imposed; and

(d) a statement of the person's right to request a hearing.

(4) The person to whom the notice is addressed has 20 days from the date of the notice in which to make written application for a hearing before the board of pharmacy.

History: En. 66-1536 by Sec. 11, Ch. 403, L. 1977; R.C.M. 1947, 66-1536; amd. Sec. 1, Ch. 247, L. 1983.

Cross-References

Contested case as including licensing, 2-4-102, 2-4-631.

Contested case procedure, Title 2, ch. 4, part 6.

Criminal responsibility of corporation, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Part 6

Wholesale Drug Distributors — Licensing

37-7-601. Scope and purpose. This part applies to a person or entity engaged in the wholesale distribution of prescription drugs in this state. The purpose of this part is to implement the federal Prescription Drug Marketing Act of 1987 by providing minimum standards, terms, and conditions for licensing by the department of persons or entities engaged in wholesale distributions of prescription drugs.

History: En. Sec. 2, Ch. 134, L. 1991.

37-7-602. Definitions. As used in this part, the following definitions apply:

(1) "Blood" means whole blood collected from a single donor and processed either for transfusion or for further manufacturing.

(2) "Blood component" means that part of blood separated by physical or mechanical means.

(3) "Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.

(4) "Manufacturer" means a person or entity engaged in the manufacturing, preparing, propagating, compounding, processing, packaging, repackaging, or labeling of a prescription drug.

(5) "Prescription drug" means any drug for humans that is required by federal law or regulation to be dispensed only by a prescription, including finished dosage forms and active ingredients subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C.S. 353).

(6) "Wholesale drug distribution" means distribution of prescription drugs to persons other than a consumer or patient. The term does not include:

(a) intracompany sales;

(b) the purchase or other acquisition, by a hospital or other health care entity that is a member of a group purchasing organization, of a drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of group purchasing organizations;

(c) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization described in section 501(c)(3) of the Internal Revenue Code of 1954 to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(d) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities that are under common control. For purposes of this subsection (d), "common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, contract, or otherwise.

(e) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons. For the purposes of this subsection (e), "emergency medical reasons" includes transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage.

(f) the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug, or the dispensing of a drug pursuant to a prescription;

(g) the distribution of drug samples by manufacturers' representatives or distributors' representatives; or

(h) the sale, purchase, or trade of blood and blood components intended for transfusion.

(7) "Wholesale drug distributor" means a person or entity engaged in wholesale distribution of prescription drugs, including but not limited to manufacturers, repackers, own-label distributors, private-label distributors, jobbers, brokers, warehouses (including manufacturers' and distributors' warehouses, chain drug warehouses, and wholesale drug warehouses), independent wholesale drug traders, and retail pharmacies that conduct wholesale distributions.

History: En. Sec. 3, Ch. 134, L. 1991.

37-7-603. Prohibited purchase or receipt of drugs — restrictions on wholesale drug distributors — penalty. (1) Except as otherwise provided, it is unlawful for a person to knowingly purchase or receive a prescription drug from a source other than a person or entity licensed under this part.

(2) Licensed wholesale drug distributors other than pharmacies may not dispense or distribute prescription drugs directly to patients.

(3) A person who violates the provisions of this section is guilty of a misdemeanor.

History: En. Sec. 4, Ch. 134, L. 1991.

37-7-604. Wholesale drug distributor licensing requirements — fee — federal compliance. (1) A person or distribution outlet may not act as a wholesale drug distributor without first obtaining a license from the board and paying the license fee.

(2) A license may not be issued or renewed for a wholesale drug distributor to operate in this state unless the applicant:

(a) agrees to abide by federal and state law and to comply with the rules adopted by the board; and

(b) pays the license fee set by the board.

(3) The board in its discretion may require that a separate license be obtained for:

(a) each facility directly or indirectly owned or operated by the same business entity within the state; or

(b) a parent entity with divisions, subsidiaries, or affiliates within the state if operations are conducted at more than one location and joint ownership and control exists among all entities.

(4) In order to obtain and maintain a wholesale drug distributorship in this state, an applicant shall provide written documentation to the board attesting that the applicant has maintained and will continue to maintain:

(a) adequate storage conditions and facilities;

(b) minimum liability and other insurance that may be required by applicable federal or state law;

(c) a functioning security system that includes:

(i) an after hours central alarm or comparable entry detection system;

(ii) restricted access to the premises;

(iii) comprehensive employee applicant screening; and

(iv) safeguards against employee theft;

(d) a system of records setting forth all activities of wholesale drug distribution as defined in 37-7-602 for at least a period of the 2 previous years. The system of records must be accessible, as defined by board regulations, for inspections authorized by the board.

(e) principals, including officers, directors, primary shareholders, and management executives, who shall at all times demonstrate and maintain their responsibility for conducting the business in conformity with sound financial practices as well as state and federal law;

(f) complete, updated information, to be provided to the board as a condition for obtaining and retaining a license, pertaining to each wholesale drug distributor to be licensed, including but not limited to:

(i) all pertinent corporate license information, if applicable; and

(ii) other information regarding ownership, principals, key personnel, and facilities;

(g) a written protocol of procedures and policies that assures preparation by the wholesale drug distributor for the handling of security or operational problems, including but not limited to those caused by:

(i) natural disaster or government emergency;

(ii) inventory inaccuracies or product shipping and receiving;

(iii) insufficient inspections for all incoming and outgoing product shipments;

(iv) lack of control of outdated or other unauthorized products;

(v) inappropriate disposition of returned goods; and

(vi) failure to promptly comply with product recalls; and

(h) operations in compliance with all federal requirements applicable to wholesale drug distribution.

(5) An agent or employee of a licensed wholesale drug distributor need not be licensed as a wholesale drug distributor.

(6) For purposes of this section, all rules and regulations promulgated by the board must conform to the wholesale drug distributor licensing guidelines formally adopted by the United States food and drug administration. If a conflict arises between a food and drug administration guideline and a rule or regulation of the board, the former controls.

History: En. Sec. 5, Ch. 134, L. 1991.

37-7-605. Out-of-state wholesale drug distributor licensing requirements. (1) It is unlawful for an out-of-state wholesale drug distributor to conduct business in this state without first obtaining a license from the board and paying the license fee established by the board.

(2) Application for a license under this section must be made on a form furnished by the board.

(3) The issuance of a license may not affect tax liability imposed by the department of revenue on any out-of-state wholesale drug distributor.

(4) A person acting as principal or agent for an out-of-state wholesale drug distributor may not sell or distribute drugs in this state unless the distributor has obtained a license.

History: En. Sec. 6, Ch. 134, L. 1991.

37-7-606. Issuance of licenses. The license for wholesale drug distributors is effective from April 1 to March 31 of the following year. An application for renewal of a license must be mailed to each licensee on or before March 1, and if the renewal application and the fee are not mailed by March 31, the license is void upon its expiration date.

History: En. Sec. 7, Ch. 134, L. 1991.

37-7-607. Qualifications for licensure — denial of license application — notice and hearing. (1) The board shall consider the following factors in determining the qualifications of applicants to engage in wholesale distribution of prescription drugs in this state:

(a) any conviction of the applicant under federal, state, or local law relating to drug samples, wholesale or retail drug distribution, or distribution of controlled substances;

(b) any felony conviction of the applicant under federal, state, or local law;

(c) the applicant's previous experience in the manufacture or distribution of prescription drugs, including controlled substances;

(d) the furnishing by the applicant of false or fraudulent material in any application made in connection with drug distribution or manufacturing;

(e) suspension or revocation by federal, state, or local government of a license currently or previously held by the applicant for the manufacture or distribution of any drugs, including controlled substances;

(f) compliance with licensing requirements under any previously granted licenses;

(g) compliance with requirements to maintain or to make available to the board or to enforcement officers of the federal government or other states records required to be maintained under this section; and

(h) any other factors the board determines necessary to protect the public interest.

(2) The board may deny a license to an applicant that in the board's discretion fails to meet the qualifications outlined in this section. The board shall give the applicant notice of the proposed action and an opportunity for a hearing pursuant to Title 2, chapter 4.

History: En. Sec. 8, Ch. 134, L. 1991.

37-7-608. License discipline — grounds for revocation, suspension, or refusal to renew license — penalty — notice and hearing. (1) The board may suspend, revoke, or refuse to renew a wholesale drug distribution license:

(a) obtained by misrepresentation or fraud;

(b) upon conviction of a violation of federal, state, or local drug laws;

(c) upon conviction of a violation of:

(i) the Federal Food, Drug, and Cosmetic Act (Title 21, chapter 9, U.S.C.);

(ii) Title 37, chapter 2 or 7;

(iii) Title 45, chapter 9 or 10;

(iv) Title 50, chapter 31 or 32; or rules adopted under subsections (1)(c)(i) through (1)(c)(iv);

(d) upon suspension or revocation by a state or territory of a license to conduct wholesale distribution of prescription drugs; or

(e) upon conviction of a violation of a provision listed in 37-7-603, 37-7-604, 37-7-605, subsection (1) of this section, or the rules implementing them.

(2) It is a misdemeanor punishable by a fine of not more than $500 for a person or entity to distribute wholesale prescription drugs in violation of a provision of 37-7-603, 37-7-604, 37-7-605, subsection (1) of this section, or the rules implementing them.

(3) Before a license can be revoked or suspended, the holder of the license is entitled to notice and the opportunity for a hearing pursuant to Title 2, chapter 4.

History: En. Sec. 9, Ch. 134, L. 1991.

37-7-609. Board access to wholesale drug records. Wholesale drug distributors may keep records at a central location apart from the principal office of the wholesale drug distributor or the location where the drugs are stored and from where they are shipped, provided that the records must be available for inspection within 2 working days of a request by the board. The records may be kept in any form permissible under federal law applicable to prescription drug recordkeeping.

History: En. Sec. 10, Ch. 134, L. 1991.

37-7-610. Rulemaking authority. The board shall adopt rules and regulations necessary to carry out the purpose and enforce the provisions of this part. If the rules and regulations conflict with the wholesale drug distribution guidelines promulgated by the United States food and drug administration, the latter control.

History: En. Sec. 11, Ch. 134, L. 1991.

Part 7

Out-of-State Mail Service Pharmacies

37-7-701. Legislative declaration. The legislature recognizes that with the proliferation of alternate methods of health care delivery, there has arisen among third-party payers and insurance companies the desire to control the cost and utilization of pharmacy services through a variety of mechanisms, including the use of mail service pharmacies located outside this state. As a result, the legislature finds and declares that to continue to protect the consumer-patients of this state, all out-of-state mail service pharmacies that provide services to this state's residents must be licensed with the board, shall disclose specific information about their services, shall meet the same standards for utilization of technicians as an in-state pharmacy, and shall provide pharmacy services at a high level of competence.

History: En. Sec. 2, Ch. 664, L. 1991; amd. Sec. 2, Ch. 300, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 300 near end of second sentence inserted "shall meet the same standards for utilization of technicians as an in-state pharmacy"; and made minor changes in style. Amendment effective July 1, 1993.

37-7-702. Out-of-state mail service pharmacy defined. "Out-of-state mail service pharmacy" means a pharmacy located outside this state that:

(1) ships, mails, or delivers by any lawful means a dispensed legend drug to a resident in this state pursuant to a legally issued prescription;

(2) provides to a resident of this state information on drugs or devices that may include but is not limited to advice relating to therapeutic values, potential hazards, and uses; or

(3) counsels pharmacy patients residing in this state concerning adverse and therapeutic effects of drugs.

History: En. Sec. 3, Ch. 664, L. 1991.

37-7-703. License requirements. Each out-of-state mail service pharmacy must be licensed by the board of pharmacy. In order to be licensed by the board to do business in this state and for annual renewal of its license, an out-of-state mail service pharmacy:

(1) (a) must be licensed and in good standing in the state in which its dispensing facilities are located; and

(b) shall comply with all applicable laws, regulations, and standards of that state and the United States and, if requested by the board, provide evidence that it has so complied;

(2) shall submit an application in form and content as determined by the board, including information on ownership and location of the out-of-state mail service pharmacy and the identity of a pharmacist in charge of dispens-

ing prescriptions for shipment to Montana from the out-of-state mail service pharmacy;

(3) shall submit a utilization plan for the employment of pharmacy technicians if allowed by the state where the mail service pharmacy is located. Any plan that has a ratio of technicians to pharmacists greater than the maximum ratio allowed for an in-state retail pharmacy under the board's rules must be approved by the board as provided in 37-7-307 through 37-7-309.

(4) shall register each pharmacist identified under subsection (2) with the board, with proof of the pharmacist's good standing with the licensing authority in the state where the pharmacist is employed and with the pharmacist's written commitment to comply with the utilization plan, if any; and

(5) shall pay an initial license fee and annual renewal fee in an amount to be determined by the board.

History: En. Sec. 4, Ch. 664, L. 1991; amd. Sec. 3, Ch. 300, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 300 an end of first sentence inserted "of pharmacy"; in (2), after "location", inserted "of the out-of-state mail service pharmacy", before "pharmacist" deleted "licensed", and after "in charge of" inserted "dispensing prescriptions for shipment to Montana"; inserted (3) requiring submission of a utilization plan; inserted (4) requiring registration of pharmacists; and made minor changes in style. Amendment effective July 1, 1993.

37-7-704. Inspections. If the licensing or regulatory agency of the state in which an out-of-state mail service pharmacy is domiciled fails or refuses to inspect the out-of-state mail service pharmacy after receiving a request for an inspection from the board of this state, the board may cancel the out-of-state pharmacy's right to do business in this state unless the out-of-state pharmacy agrees to an onsite inspection by the board of this state.

History: En. Sec. 5, Ch. 664, L. 1991.

37-7-705. Product selection of prescribed drugs — notification. (1) An out-of-state mail service pharmacy may not substitute a prescription drug unless the substitution is made in compliance with the laws of this state and the rules and regulations of the board.

(2) An out-of-state mail service pharmacy may not dispense a substitute drug product to a resident of this state without notifying the patient of the substitution either by telephone or in writing.

History: En. Sec. 6, Ch. 664, L. 1991.

37-7-706. Patient communication — telephone service. Every out-of-state mail service pharmacy shall provide a toll-free telephone service, available at least 6 days a week and for 40 hours a week, to facilitate communication as may be required under this part, between patients in this state and a pharmacist who has access to the patients' records at the out-of-state mail service pharmacy. The toll-free telephone number must be affixed to all drug product containers dispensed to patients in this state.

History: En. Sec. 7, Ch. 664, L. 1991.

37-7-707 through 37-7-709 reserved.

37-7-710. Discipline of registered pharmacists. The board may, upon investigation and opportunity for hearing, suspend or revoke the registration of a pharmacist registered under 37-7-703 for any violation of this part by the pharmacist.

History: En. Sec. 4, Ch. 300, L. 1993.

Compiler's Comments

Effective Date: Section 7, Ch. 300, L. 1993, provided: "[This act] is effective July 1, 1993."

37-7-711. Penalty. In addition to all other penalties provided by law, a person violating 37-7-703 through 37-7-706 shall be fined not more than $250 for each violation.

History: En. Sec. 8, Ch. 664, L. 1991.

Parts 8 through 10 reserved

Part 11

Peer Review

Part Cross-References

Licensing investigation and review — record access, 37-1-135.

Health care practitioners — nonliability for peer review, Title 37, ch. 2, part 2.

37-7-1101. Nonliability for peer review. No member, employee, or volunteer intervenor of the Montana pharmaceutical association in its peer review program is liable in damages to any person for any action taken or recommendation made within the scope of the program if the member, employee, or volunteer acts in good faith in accordance with the rules of the association.

History: En. Sec. 1, Ch. 235, L. 1987.

CHAPTER 8

NURSING

Part 1 — General

37-8-101. Purpose.
37-8-102. Definitions.
37-8-103. Exemptions — limitations on authority conferred.

Part 2 — Board of Nursing

37-8-201. Seal — board records public — legal counsel.
37-8-202. Organization — meetings — powers and duties.
37-8-203. Compensation of members — expenses.
37-8-204. Executive director — qualifications.

Part 3 — Schools of Nursing

37-8-301. Nursing education programs — application for approval.
37-8-302. Nursing education programs — survey and approval.

Part 4 — Licensing

37-8-401. Unlawful to indicate licensure without valid license.
37-8-402 through 37-8-404 reserved.
37-8-405. Professional nursing — qualifications of applicants for license.
37-8-406. License — professional nursing — examination.
37-8-407. Endorsement — professional nursing.

37-8-408. Title and abbreviation of registered nurse.
37-8-409. Midwifery — when professional nurse may practice.
37-8-410 through 37-8-414 reserved.
37-8-415. Licensed practical nursing — qualifications of applicants.
37-8-416. Licensed practical nursing — examination.
37-8-417. Endorsement — licensed practical nursing.
37-8-418. Licensed practical nursing — application fee.
37-8-419. Title and abbreviation of licensed practical nurse.
37-8-420 through 37-8-429 reserved.
37-8-430. Temporary work permit.
37-8-431. Renewal of license.
37-8-432. Deposit of fees.
37-8-433. Nonrenewal of lapsed licenses — termination.
37-8-434 through 37-8-440 reserved.
37-8-441. Denial, revocation, or suspension of license — grounds.
37-8-442. Denial, revocation, or suspension of license — procedure.
37-8-443. Violation of chapter — penalties.
37-8-444. Injunctions.

Chapter Cross-References

Limits on liability for emergency care rendered at scene of accident or emergency, 27-1-714.

Limits on liability of health care provider in emergency situations, 27-1-734.

Professional service corporations, Title 35, ch. 4.

General provisions relating to health care practitioners, Title 37, ch. 2.

Limitations on dentistry and oral surgery practices involving general anesthesia, 37-4-511.

Collective bargaining for nurses, Title 39, ch. 32.

Nurses required to report child abuse, 41-3-201.

Report of fetal death that occurs outside licensed medical facility, 46-4-114.

Health care information, Title 50, ch. 16.

Part 1
General

Part Cross-References

Duty of nurse to report violation of Montana Elder Abuse Prevention Act, 52-3-811.

37-8-101. Purpose. (1) In order to safeguard life and health, any person practicing or offering to practice professional nursing in this state for compensation or personal gain shall be required to submit evidence that he or she is qualified to practice and shall be licensed as hereinafter provided.

(2) In order to safeguard life and health, any person practicing or offering to practice practical nursing in this state for compensation or personal gain shall be required to submit evidence that he or she is qualified to practice and shall be licensed as hereinafter provided.

History: En. Sec. 1, Ch. 243, L. 1953; amd. Sec. 1, Ch. 291, L. 1967; R.C.M. 1947, 66-1221(part).

37-8-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advanced practice registered nurse" means a registered professional nurse who has completed educational requirements related to the nurse's specific practice role, in addition to basic nursing education, as specified by the board pursuant to 37-8-202(5)(a).

(2) "Board" means the board of nursing provided for in 2-15-1844.

(3) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(4) "Nursing education program" means any board-approved school that prepares graduates for initial licensure under this chapter. Nursing education programs for:

(a) professional nursing may be a department, school, division, or other administrative unit in a senior or junior college or university;

(b) practical nursing may be a department, school, division, or other administrative unit in a vocational-technical center or junior college.

(5) "Practice of nursing" embraces two classes of nursing service and activity, as follows:

(a) "Practice of practical nursing" means the performance for compensation of services requiring basic knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing procedures. Practical nursing practice utilizes standardized procedures in the observation and care of the ill, injured, and infirm; in the maintenance of health; in action to safeguard life and health; and in the administration of medications and treatments prescribed by a physician, advanced practice registered nurse, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. These services are performed under the supervision of a registered nurse or a physician, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments.

(b) "Practice of professional nursing" means the performance for compensation of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health; the prevention, casefinding, and management of illness, injury, or infirmity; and the restoration of optimum function. The term also includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, advanced practice registered nurses, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. As used in this subsection (5)(b):

(i) "nursing analysis" is the identification of those client problems for which nursing care is indicated and may include referral to medical or community resources;

(ii) "nursing intervention" is the implementation of a plan of nursing care necessary to accomplish defined goals.

History: **En. Sec. 2, Ch. 243, L. 1953; amd. Sec. 2, Ch. 291, L. 1967; amd. Sec. 114, Ch. 350, L. 1974; amd. Sec. 1, Ch. 180, L. 1975; R.C.M. 1947, 66-1222; amd. Sec. 4, Ch. 248, L. 1981; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 504, L. 1989; amd. Sec. 1, Ch. 584, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 584 inserted definition of advanced practice registered nurse; in definition of practice of practical nursing, in second sentence near middle, inserted "advanced practice registered nurse"; and in definition of practice of professional nursing, in third sentence near middle, inserted "advanced practice registered nurses" and in fifth sentence substituted "subsection (5)(b)" for "subsection (4)(b)".

37-8-103. Exemptions — limitations on authority conferred. (1) No provisions of this law may be construed as prohibiting:

(a) gratuitous nursing by friends or members of the family;

(b) incidental care of the sick by domestic servants or persons primarily employed as housekeepers;

(c) nursing assistance in the case of an emergency;

(d) the practice of nursing by students enrolled in approved nursing education programs;

(e) the practice of nursing in this state by any legally qualified nurse of another state whose engagement requires the nurse to accompany and care for a patient temporarily residing in this state during the period of one such engagement not to exceed 6 months in length, provided that person does not represent to the public that the person is a nurse licensed to practice in this state;

(f) the practice of any legally qualified nurse of another state who is employed by the United States government or any bureau, division, or agency thereof while in the discharge of that nurse's official duties;

(g) nursing or care of the sick, with or without compensation, when done in connection with the practice of the religious tenets of any well-established religion or denomination by adherents thereof;

(h) nursing or care of a minor who is in the care of a licensed foster parent, to the same extent such care may be provided by a parent or guardian;

(i) the execution of a death sentence pursuant to 46-19-103; and

(j) nursing tasks delegated by licensed nurses to unlicensed persons according to rules adopted by the board.

(2) This chapter may not be construed as conferring any authority to practice medicine, surgery, or any combination thereof; to confer any authority to practice any of the healing arts prescribed by law to be practiced in the state of Montana; or to permit any person to undertake the treatment of disease by any of the methods employed in those arts unless the licensee has been qualified under the applicable law or laws licensing the practice of those professions or healing arts in the state of Montana.

History: En. Sec. 22, Ch. 243, L. 1953; amd. Sec. 7, Ch. 291, L. 1967; amd. Sec. 4, Ch. 101, L. 1977; R.C.M. 1947, 66-1242; amd. Sec. 1, Ch. 148, L. 1979; amd. Sec. 5, Ch. 248, L. 1981; amd. Sec. 2, Ch. 411, L. 1983; amd. Sec. 2, Ch. 584, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 584 inserted (1)(j) concerning delegated nursing tasks; and made minor changes in style.

Cross-References

Exemptions from physician's licensing requirements, 37-3-103.

Part 2
Board of Nursing

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1844.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-8-201. Seal — board records public — legal counsel. (1) The board shall have a seal which shall be used to authenticate its acts. The seal shall have inscribed the words "Board of Nursing—Official Seal" and a device or legend designated by the board.

(2) The records and files of the board kept by the department are at all times open to public inspection.

(3) The attorney general is the attorney and legal counsel for the board, but the department may, with the approval of the attorney general, appoint additional legal counsel to assist the board and department in the administration and enforcement of this chapter.

History: En. Sec. 3, Ch. 243, L. 1953; amd. Sec. 115, Ch. 350, L. 1974; R.C.M. 1947, 66-1223; amd. Sec. 6, Ch. 248, L. 1981.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Public records, Title 2, ch. 6.

Duties of Attorney General, 2-15-501.

Preservation of records, Title 22, ch. 3, part 2.

Duty of Department to keep records, 37-1-101.

37-8-202. Organization — meetings — powers and duties. (1) The board shall meet annually and shall elect from among the nine members a president and a secretary. The board shall hold other meetings when necessary to transact its business. A majority of the board constitutes a quorum at any meeting. The department shall keep complete minutes and records of the meetings and rules and orders promulgated by the board.

(2) The board may make rules necessary to administer this chapter. The board shall prescribe standards for schools preparing persons for registration and licensure under this chapter. It shall provide for surveys of schools at times it considers necessary. It shall approve programs that meet the requirements of this chapter and of the board. The department shall, subject to 37-1-101, examine and issue to and renew licenses of qualified applicants. The board shall conduct hearings on charges that may call for discipline of a licensee, revocation of a license, or removal of schools of nursing from the approved list. It shall cause the prosecution of persons violating this chapter and may incur necessary expenses for prosecutions.

(3) The board may adopt and the department shall publish forms for use by applicants and others, including license, certificate, and identity forms and other appropriate forms and publications convenient for the proper administration of this chapter. The board may fix reasonable fees for incidental services, within the subject matter delegated by this chapter.

(4) The board may participate in and pay fees to a national organization of state boards of nursing to ensure interstate endorsement of licenses.

(5) (a) The board may define the educational requirements and other qualifications applicable to advanced practice registered nurses. Advanced

practice registered nurses are nurses who must have additional professional education beyond the basic nursing degree required of a registered nurse. Additional education must be obtained in courses offered in a university setting or its equivalent. The applicant must be certified by a certifying body for advanced practice registered nurses. Advanced practice registered nurses include nurse practitioners, nurse-midwives, nurse-anesthetists, and clinical nurse specialists.

(b) The board of nursing and the board of medical examiners, acting jointly, shall adopt rules regarding authorization for prescriptive authority of nurse specialists. If considered appropriate for a nurse specialist who applies to the board for authorization, prescriptive authority must be granted.

(6) The board shall establish a program to assist licensed nurses who are found to be physically or mentally impaired by habitual intemperance or the excessive use of narcotic drugs, alcohol, or any other drug or substance. The program must provide assistance to licensees in seeking treatment for substance abuse and monitor their efforts toward rehabilitation. For purposes of funding this program, the board shall adjust the license fee provided for in 37-8-431 commensurate with the cost of the program.

(7) The board may adopt rules for delegation of nursing tasks by licensed nurses to unlicensed persons.

(8) The board may fund additional staff, hired by the department, to administer the provisions of this chapter.

History: En. Sec. 5, Ch. 243, L. 1953; amd. Sec. 116, Ch. 350, L. 1974; amd. Sec. 2, Ch. 180, L. 1975; R.C.M. 1947, 66-1225; amd. Sec. 7, Ch. 248, L. 1981; amd. Sec. 2, Ch. 282, L. 1987; amd. Sec. 1, Ch. 430, L. 1989; amd. Sec. 3, Ch. 444, L. 1989; amd. Sec. 1, Ch. 290, L. 1991; amd. Sec. 3, Ch. 584, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 584 throughout (5)(a) substituted references to advanced practice registered nurses for references to specialty areas of nursing and at end inserted "and clinical nurse specialists"; inserted (7) concerning adoption of rules for delegation of nursing tasks; inserted (8) concerning funding of additional staff; and made minor changes in style.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Meeting defined, 2-3-202.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Contested case procedure, Title 2, ch. 4, part 6.

Open meetings, Title 3, ch. 3, part 2.

Duty of Department to provide facilities, 37-1-101.

Duties of boards, 37-1-131.

Disrupting meeting as disorderly conduct, 45-8-101.

37-8-203. Compensation of members — expenses. Each member of the board shall receive compensation and travel expenses as provided in 37-1-133.

History: En. Sec. 6, Ch. 243, L. 1953; amd. Sec. 117, Ch. 350, L. 1974; amd. Sec. 3, Ch. 180, L. 1975; amd Sec. 31, Ch. 439, L. 1975; R.C.M. 1947, 66-1226; amd. Sec. 13, Ch. 474, L. 1981.

37-8-204. Executive director — qualifications. (1) The department shall hire an executive director to provide services to the board in connection with the board's duties of:

(a) prescribing curricula and standards for nursing schools and making surveys of and approving schools and courses;

(b) evaluating and approving courses for affiliation of student nurses; and

(c) reviewing qualifications of applicants for licensure.

(2) The executive director must be:

(a) a citizen of the United States;

(b) a graduate of an approved school of nursing;

(c) a holder of at least a master's degree with postgraduate courses in nursing;

(d) a registered professional nurse with at least 5 years' experience in teaching or administration in an approved school of nursing.

History: En. Sec. 19, Ch. 243, L. 1953; amd. Sec. 126, Ch. 350, L. 1974; amd. Sec. 6, Ch. 180, L. 1975; R.C.M. 1947, 66-1239(3); amd. Sec. 2, Ch. 83, L. 1981; amd. Sec. 4, Ch. 584, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 584 in (1), at beginning, substituted "The department shall hire an executive director" for "Any secretary hired by the department"; at end of (1)(c) deleted "for the board shall be"; inserted introductory clause of (2) concerning executive director; and made minor changes in style.

Part 3
Schools of Nursing

37-8-301. Nursing education programs — application for approval. An institution desiring to conduct a nursing education program in the state shall apply to the department and submit evidence that it is prepared to carry out an educational program that complies with the provisions of this chapter and the rules adopted by the board pursuant to this section. The board shall adopt rules relating to the conduct of nursing education programs that are directed toward insuring qualifications to practice as a professional nurse or a practical nurse in those areas of service specified in 37-8-102.

History: En. Sec. 18, Ch. 243, L. 1953; amd. Sec. 125, Ch. 350, L. 1974; R.C.M. 1947, 66-1238; amd. Sec. 8, Ch. 248, L. 1981.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-8-302. Nursing education programs — survey and approval. (1) It is the duty of the department through its authorized employees or representatives to periodically survey all nursing education programs. Written reports of such surveys shall be submitted to the board. If, in the opinion of the board, the requirements for an approved nursing education program are met, the program shall be granted initial or continuing approval.

(2) If the board determines that any approved nursing education program is not maintaining the standards required by law and the rules established by the board, notice shall be given to the nursing education program specifying the areas of noncompliance. A program that fails to correct these areas of noncompliance within the time designated by the board shall be removed from the list of approved nursing education programs.

History: En. Sec. 19, Ch. 243, L. 1953; amd. Sec. 126, Ch. 350, L. 1974; amd. Sec. 6, Ch. 180, L. 1975; R.C.M. 1947, 66-1239(1), (2); amd. Sec. 9, Ch. 248, L. 1981.

Part 4
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-8-401. Unlawful to indicate licensure without valid license. It shall be unlawful for any person to use any title, abbreviation, sign, card, or device to indicate that such person is a registered professional nurse or a licensed practical nurse unless such person has been duly licensed under the provisions of this chapter, and the license of such person shall be valid and in force in compliance with the provisions of this chapter.

History: En. Sec. 1, Ch. 243, L. 1953; amd. Sec. 1, Ch. 291, L. 1967; R.C.M. 1947, 66-1221(part).

37-8-402 through 37-8-404 reserved.

37-8-405. Professional nursing — qualifications of applicants for license. An applicant for a license to practice as a registered professional nurse shall submit to the department written evidence, verified by oath, that the applicant:

(1) has successfully completed at least an approved 4-year high school course of study or the equivalent as determined by the office of the superintendent of public instruction;

(2) has completed the basic professional curriculum in an approved school of nursing and holds a diploma therefrom; and

(3) meets other qualification requirements the board prescribes.

History: En. Sec. 7, Ch. 243, L. 1953; amd. Sec. 118, Ch. 350, L. 1974; R.C.M. 1947, 66-1227; amd. Sec. 3, Ch. 84, L. 1983.

Cross-References

Oath defined, 1-1-201.

Proof of execution, Title 1, ch. 5, part 3.

Power of notary to take acknowledgments, 1-5-416.

Oaths, Title 1, ch. 6.

Affidavits, Title 26, ch. 1, part 10.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Perjury, 45-7-201.

False swearing, 45-7-202.

37-8-406. License — professional nursing — examination. (1) An applicant for a license to practice as a registered professional nurse is required to pass a written examination in subjects the board determines necessary. A written examination may be supplemented by an oral or practical examination. The board may use any national standardized examination for professional nurse licensure identified in its rules. The passing score on such examination shall be established by the board in its rules. On successfully passing the examination, an applicant shall be issued a license to practice professional nursing.

(2) The board shall establish in its rules the requirements for rewriting the examination for those persons failing the examination on the first writing and subsequent writing.

History: **En. Sec. 8, Ch. 243, L. 1953; amd. Sec. 1, Ch. 195, L. 1963; amd. Sec. 3, Ch. 291, L. 1967; amd. Sec. 119, Ch. 350, L. 1974; amd. Sec. 4, Ch. 180, L. 1975; amd. Sec. 1, Ch. 215, L. 1975; R.C.M. 1947, 66-1228(1); amd. Sec. 10, Ch. 248, L. 1981; amd. Sec. 18, Ch. 345, L. 1981.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Duty of Department to administer and grade examinations, 37-1-101.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-8-407. Endorsement — professional nursing. The board may issue without examination a license to practice nursing as a registered professional nurse to an applicant who has been licensed or registered as a professional nurse under the laws of another state or territory if in the opinion of the board the applicant meets the qualifications required of registered nurses in this state at the time the applicant graduated from a school of nursing. The applicant shall pay a fee prescribed by the board at the time the application is submitted, which shall be returned to the applicant if the application is withdrawn not later than 5 days prior to final submission of the application to the board, subject to deduction of an amount prescribed by the board to be retained by the department.

History: **En. Sec. 8, Ch. 243, L. 1953; amd. Sec. 1, Ch. 195, L. 1963; amd. Sec. 3, Ch. 291, L. 1967; amd. Sec. 119, Ch. 350, L. 1974; amd. Sec. 4, Ch. 180, L. 1975; amd. Sec. 1, Ch. 215, L. 1975; R.C.M. 1947, 66-1228(2), (3); amd. Sec. 11, Ch. 248, L. 1981; amd. Sec. 19, Ch. 345, L. 1981.**

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Affidavits, Title 26, ch. 1, part 10.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-8-408. Title and abbreviation of registered nurse. Any person who holds a valid license to practice as a registered professional nurse in this state shall have the right to use the title "Registered Nurse" and the abbreviation "R.N.".

History: **En. Sec. 9, Ch. 243, L. 1953; R.C.M. 1947, 66-1229.**

37-8-409. Midwifery — when professional nurse may practice. (1) A person licensed under 37-8-406 or 37-8-407 who holds a certificate in nurse-midwifery from the American college of nurse-midwives may practice midwifery upon approval by the board of an amendment to her license granting a certificate of nurse-midwifery. The board shall grant a certificate of nurse-midwifery to a person who submits written verification of certification by the American college of nurse-midwives and who meets such other qualification requirements as the board may prescribe.

(2) The board may give temporary approval to practice nurse-midwifery for up to 4 months to a person who has taken the American college of nurse-midwives national certification examination, pending receipt of official notification of the results of the examination.

History: **En. 66-1246 by Sec. 2, Ch. 97, L. 1974; R.C.M. 1947, 66-1246; amd. Sec. 12, Ch. 248, L. 1981.**

Cross-References

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Report of fetal death that occurs outside licensed medical facility, 46-4-114.

Nondiscrimination in licensing, 49-3-204.

37-8-410 through 37-8-414 reserved.

37-8-415. Licensed practical nursing — qualifications of applicants. An applicant for a license to practice as a licensed practical nurse shall submit to the board written evidence, verified by oath, that the applicant:

(1) has successfully completed at least an approved 4-year high school course of study or the equivalent as determined by the office of the superintendent of public instruction;

(2) is a graduate of an approved practical nursing education program that is authorized to prepare persons for licensure as practical nurses; and

(3) meets other qualification requirements the board prescribes in its rules.

History: En. Sec. 11, Ch. 243, L. 1953; amd. Sec. 4, Ch. 291, L. 1967; amd. Sec. 120, Ch. 350, L. 1974; R.C.M. 1947, 66-1231; amd. Sec. 13, Ch. 248, L. 1981.

Cross-References

Oath defined, 1-1-201.

Proof of execution, Title 1, ch. 5, part 3.

Power of notary to take acknowledgments, 1-5-416.

Oaths, Title 1, ch. 6.

Affidavits, Title 26, ch. 1, part 10.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Perjury, 45-7-201.

False swearing, 45-7-202.

37-8-416. Licensed practical nursing — examination. An applicant for a license to practice as a practical nurse is required to pass a written examination in subjects as the board determines. A written examination may be supplemented by an oral or practical examination. The board may use any nationally standardized examination for practical nurse licensure identified by the board in its rules. The passing score shall be established by the board in its rules. On successfully passing the examination, the board shall issue to the applicant a license to practice as a licensed practical nurse.

History: En. Sec. 12, Ch. 243, L. 1953; amd. Sec. 5, Ch. 291, L. 1967; amd. Sec. 121, Ch. 350, L. 1974; amd. Sec. 5, Ch. 180, L. 1975; R.C.M. 1947, 66-1232(1); amd. Sec. 14, Ch. 248, L. 1981.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

37-8-417. Endorsement — licensed practical nursing. The board may issue a license to practice as a licensed practical nurse, without examination, to an applicant who has been licensed or registered as a licensed practical nurse or person entitled to perform like services under a different title under the laws of another state or territory if, in the opinion of the board, the applicant meets the requirements for practical nurses in this state.

History: En. Sec. 12, Ch. 243, L. 1953; amd. Sec. 5, Ch. 291, L. 1967; amd. Sec. 121, Ch. 350, L. 1974; amd. Sec. 5, Ch. 180, L. 1975; R.C.M. 1947, 66-1232(2), (3); amd. Sec. 15, Ch. 248, L. 1981.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-8-418. Licensed practical nursing — application fee. An applicant for a license to practice as a licensed practical nurse shall pay a fee prescribed by the board to the department at the time the application is submitted, which fee shall be returned to the applicant if the application is withdrawn not later than 5 days prior to the date of examination or the final submission to the board of application for endorsement without examination, subject to a deduction of an amount prescribed by the board to be retained by the department.

History: En. Sec. 14, Ch. 243, L. 1953; amd. Sec. 2, Ch. 195, L. 1963; amd. Sec. 122, Ch. 350, L. 1974; amd. Sec. 2, Ch. 215, L. 1975; R.C.M. 1947, 66-1234; amd. Sec. 20, Ch. 345, L. 1981.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-8-419. Title and abbreviation of licensed practical nurse. Any person who holds a valid license to practice as a licensed practical nurse in this state shall have the right to use the title "Licensed Practical Nurse" and the abbreviation "L.P.N.".

History: En. Sec. 15, Ch. 243, L. 1953; R.C.M. 1947, 66-1235.

37-8-420 through 37-8-429 reserved.

37-8-430. Temporary work permit. (1) The board may issue a temporary work permit for a period not to exceed 90 days to a registered professional nurse or licensed practical nurse who is currently licensed in another state, a territory of the United States, or the District of Columbia and who is an applicant for licensure by endorsement. Such permit is not renewable.

(2) The board may issue a temporary work permit to a graduate of an approved nursing education program or approved practical nursing education program pending the results of the first licensing examination following graduation. Such permit is not renewable.

(3) To protect the public, the board shall adopt such rules as are necessary to limit the practice of persons issued temporary work permits. Such rules shall include a provision that such practice be supervised by a physician, dentist, osteopath, podiatrist, or registered nurse until a license is issued and shall include a definition of supervision.

History: En. Sec. 19, Ch. 248, L. 1981.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-8-431. Renewal of license. (1) The license of a person licensed under this chapter must be annually renewed. Before December 1 of each year, the department shall mail an application form for renewal of license to every person to whom a license was issued or renewed during the year. The applicant shall carefully complete and subscribe the application form and return it to the department with a renewal fee prescribed by the board before January 1.

(2) The board may increase or decrease the annual license fee so as to maintain in the state special revenue fund at all times an adequate amount to be used for the purpose of administering, policing, and enforcing the provisions of this chapter. On receipt of the application and fee, the department shall verify the accuracy of the application against its record and from other sources the board considers reliable and issue to the applicant a certificate of renewal for the current year beginning January 1 and expiring

December 31 following. The certificate of renewal renders the holder a legal practitioner of nursing for the period stated in the certificate of renewal.

(3) A licensee who allows his license to lapse by failing to renew the license may be reinstated by the board on satisfactory explanation for the failure to renew license and on payment of the current renewal fee prescribed by the board.

(4) A person practicing nursing during the time following the date his license has expired is an illegal practitioner and is subject to the penalties provided for violations of this chapter.

(5) The board may establish a reasonable late fee for licensees who fail to renew their license by January 1 as required in subsection (1).

History: **En. Sec. 16, Ch. 243, L. 1953; amd. Sec. 3, Ch. 195, L. 1963; amd. Sec. 123, Ch. 350, L. 1974; amd. Sec. 3, Ch. 215, L. 1975; R.C.M. 1947, 66-1236; amd. Sec. 16, Ch. 248, L. 1981; amd. Sec. 21, Ch. 345, L. 1981; amd. Sec. 1, Ch. 277, L. 1983.**

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-8-432. Deposit of fees. Fees and fines collected by the department under this chapter, except those collected by a justice's court, shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: **En. Sec. 17, Ch. 243, L. 1953; amd. Sec. 118, Ch. 147, L. 1963; amd. Sec. 124, Ch. 350, L. 1974; R.C.M. 1947, 66-1237; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 24, Ch. 557, L. 1987.**

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

37-8-433. Nonrenewal of lapsed licenses — termination. A lapsed license to practice nursing that is not renewed within 3 years of the most recent renewal date automatically terminates. The terminated license may not be reinstated, and a new license must be obtained by filing an application as a new applicant, paying the appropriate fee, and passing an examination.

History: **En. Sec. 5, Ch. 584, L. 1993.**

37-8-434 through 37-8-440 reserved.

37-8-441. Denial, revocation, or suspension of license — grounds. Only after compliance with 37-8-442, the board may deny, revoke, or suspend a license to practice nursing or discipline a licensee on proof that the person:

(1) is guilty of fraud or deceit in procuring or attempting to procure a license to practice nursing;

(2) is unfit or incompetent by reason of negligence, habit, or other causes;

(3) is habitually intemperate or is addicted to the use of habit-forming drugs;

(4) is mentally or physically incompetent;

(5) is guilty of unprofessional conduct as defined by rules of the board;

(6) has willfully or repeatedly violated this chapter.

History: **En. Sec. 20, Ch. 243, L. 1953; amd. Sec. 127, Ch. 350, L. 1974; R.C.M. 1947, 66-1240; amd. Sec. 17, Ch. 248, L. 1981; amd. Sec. 3, Ch. 282, L. 1987.**

Cross-References

Kinds of fraud, 28-2-404.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

37-8-442. Denial, revocation, or suspension of license — procedure. (1) Upon receipt of a written complaint charging a person with violation of 37-8-441 as a ground for disciplinary action or on other information that a licensee may be in violation of 37-8-441, the board shall investigate, and if it finds reasonable cause to believe that a violation has occurred, it shall initiate proceedings under the Montana Administrative Procedure Act.

(2) If the person charged is found guilty of the charges, the board may refuse to grant a license to the applicant or may revoke or suspend a license issued to a licensee.

(3) A revoked or suspended license may be reissued after 1 year, in the discretion of the board.

History: En. Sec. 21, Ch. 243, L. 1953; amd. Sec. 128, Ch. 350, L. 1974; R.C.M. 1947, 66-1241; amd. Sec. 18, Ch. 248, L. 1981; amd. Sec. 4, Ch. 282, L. 1987.

Cross-References

Oath defined, 1-1-201.

Oaths, Title 1, ch. 6.

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Affidavits, Title 26, ch. 1, part 10.

Perjury, 45-7-201.

False swearing, 45-7-202.

37-8-443. Violation of chapter — penalties. (1) It is a misdemeanor for a person (including a corporation, association, or individual) to:

(a) sell or fraudulently obtain or furnish any nursing diploma, license, or record or aid or abet therein;

(b) practice nursing as defined by this chapter under cover of any diploma, license, or record illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation;

(c) practice professional nursing unless duly licensed to do so;

(d) practice practical nursing unless duly licensed to do so;

(e) use in connection with the person's name any designation tending to imply that the person is a registered professional nurse or a licensed practical nurse unless duly licensed to so practice;

(f) practice nursing during the time the person's license is suspended, revoked, or on inactive status;

(g) conduct a school of nursing or a course unless the school or course has been approved by the board;

(h) otherwise violate any provision of this chapter.

(2) Such misdemeanor is punishable by a fine of not less than $100 for the first offense. Each subsequent offense is punishable by a fine of $300, by imprisonment of not more than 6 months in the county jail, or by both such fine and imprisonment.

(3) The several district courts within their respective county jurisdictions may hear, try, and determine such misdemeanor and impose in full the punishment and fines prescribed. It is necessary to prove, in any prosecution

for misdemeanor under this section, only a single act prohibited by law or a single holding out or an attempt. It is not necessary to prove a general course of conduct in order to constitute a violation.

History: En. Sec. 23, Ch. 243, L. 1953; amd. Sec. 8, Ch. 291, L. 1967; amd. Sec. 5, Ch. 101, L. 1977; R.C.M. 1947, 66-1243.

Cross-References

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

37-8-444. Injunctions. When it appears to the board that any person is violating any of the provisions of this chapter, the board may in its own name bring an action in a court of competent jurisdiction for an injunction against such violation, and the proper courts of this state may enjoin any person, firm, or corporation from violation of this chapter without regard to whether proceedings have been or may be instituted before the board or whether criminal proceedings have been or may be instituted.

History: En. Sec. 24, Ch. 243, L. 1953; R.C.M. 1947, 66-1244.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Disciplinary authority of boards — injunctions, 37-1-136.

CHAPTER 9

NURSING HOME ADMINISTRATORS

Part 1 — General

37-9-101. Definitions.

Part 2 — Board of Nursing Home Administrators

37-9-201. Organization and compensation of board.
37-9-202. Exclusive jurisdiction of board.
37-9-203. Duties of board.

Part 3 — Licensing

37-9-301. Qualifications for licensure — examination.
37-9-302. Department to license pursuant to board rules — nontransferability — temporary permit.
37-9-303. Admission of licensees from other states.
37-9-304. Fees.
37-9-305. Renewal of registration and license.
37-9-306. Deposit of fees.
37-9-307 through 37-9-310 reserved.
37-9-311. Revocation and suspension.
37-9-312. Violation.

Chapter Cross-References

Medical services and boarding homes for the aged, Title 7, ch. 34.

Hospitals and related facilities, Title 50, ch. 5.

Adult Foster Family Care Act, Title 52, ch. 3, part 3.

Community-based nursing homes — center for the aged, Title 53, ch. 21, part 4.

Part 1
General

Part Cross-References

Duty of nursing home administrator to report violation of Montana Elder Abuse Prevention Act, 52-3-811.

37-9-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of nursing home administrators provided for in 2-15-1845.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Inactive nursing home administrator" means an individual who has been licensed in this state as a nursing home administrator and whose license has not been revoked or suspended but who is not actively engaged in nursing home administration.

(4) "Long-term care facility" means any skilled nursing facility, nursing home, or intermediate care facility as defined for licensing purposes under state law or the rules for long-term care facilities of the department of health and environmental sciences, whether proprietary or nonprofit, including facilities owned or administered by the state or a political subdivision.

(5) "Nursing home administrator" means a person who administers, manages, supervises, or is in general administrative charge of a long-term care facility, whether the individual has an ownership interest in the facility and whether his functions and duties are shared with one or more individuals.

History: En. Sec. 1, Ch. 363, L. 1969; amd. Sec. 1, Ch. 483, L. 1973; amd. Sec. 305, Ch. 350, L. 1974; R.C.M. 1947, 66-3101; amd. Sec. 3, Ch. 274, L. 1981.

Part 2
Board of Nursing Home Administrators

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1845.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-9-201. Organization and compensation of board. (1) The board shall elect from its membership a chairman, vice-chairman, and secretary-treasurer and shall adopt rules to govern its proceedings.

(2) Each board member shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 7, Ch. 363, L. 1969; amd. Sec. 45, Ch. 439, L. 1975; R.C.M. 1947, 66-3107; amd. Sec. 14, Ch. 474, L. 1981.

37-9-202. Exclusive jurisdiction of board. The board shall have exclusive authority to determine the qualifications, skill, and fitness of any person to serve as an administrator of a nursing home under the provisions of this chapter, and the holder of a license under the provisions of this chapter shall be deemed qualified to serve as the administrator of a nursing home for all purposes.

History: En. Sec. 8, Ch. 363, L. 1969; R.C.M. 1947, 66-3108.

37-9-203. Duties of board. The board shall:

(1) develop, impose, and enforce standards which must be met by individuals in order to register and receive a license as a nursing home administrator, designed to ensure that nursing home administrators are individuals of good character and otherwise suitable and, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators;

(2) develop and apply appropriate techniques, including examination and investigation, for determining whether individuals meet the standards;

(3) authorize the department to register and issue licenses to individuals, after application of the techniques, determined to meet the standards;

(4) establish and implement procedures designed to ensure that individuals registered and licensed as nursing home administrators will, during the period that they serve, comply with the requirements of the standards;

(5) conduct a continuing study and investigation of nursing home administrators within the state with a view to the improvement of the standards imposed for the licensing of administrators and of procedures and methods for the enforcement of the standards with respect to nursing home administrators;

(6) conduct or cause to be conducted one or more courses of instruction and training sufficient to meet the requirements of this chapter and make provisions for the conduct of these courses and their accessibility to residents of this state, unless it finds that there are a sufficient number of courses conducted by others within this state to meet the needs of the state; instead, the board may approve courses conducted within and outside of this state sufficient to meet the education and training requirements of this chapter;

(7) prescribe or approve continuing education courses.

History: En. Sec. 9, Ch. 363, L. 1969; amd. Sec. 6, Ch. 483, L. 1973; amd. Sec. 310, Ch. 350, L. 1974; R.C.M. 1947, 66-3109(part).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation for administrative purposes only, 2-15-121.

Quasi-judicial boards, 2-15-124.

Duties of boards, 37-1-131.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-9-301. Qualifications for licensure — examination. (1) The department shall register and issue licenses to qualified persons as nursing home administrators, and the board shall establish qualification criteria for nursing home administrators. No registration or license shall be issued to a person as a nursing home administrator unless he:

(a) is of good character, of sound physical and mental health, has received a high school diploma or its equivalent; and

(b) (i) has satisfactorily completed a course of instruction and training prescribed by the board, which shall be designed and administered to present sufficient knowledge of the needs properly served by long-term care facilities, laws governing the operation of long-term care facilities and the protection of the interests of patients, and the elements of good nursing home administration; or

(ii) has presented evidence satisfactory to the board of sufficient education, training, or experience, or a combination of education, training, and experience, in the fields referred to in subsection (1)(b)(i) to administer, supervise, and manage a long-term care facility; and

(c) has passed an examination designed to test for competence in the subject matters referred to in subsection (1)(b)(i).

(2) The minimum standards for qualification shall comply with the requirements, if any, set forth in Title XIX of the Social Security Act (P.L. 90-248, 1967), as amended.

History: En. Sec. 3, Ch. 363, L. 1969; amd. Sec. 10, Ch. 168, L. 1971; amd. Sec. 3, Ch. 483, L. 1973; amd. Sec. 307, Ch. 350, L. 1974; R.C.M. 1947, 66-3103; amd. Sec. 1, Ch. 464, L. 1989.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-9-302. Department to license pursuant to board rules — nontransferability — temporary permit. (1) The department shall register and license nursing home administrators under the rules adopted by the board.

(2) A nursing home administrator's registration and license is not transferable and is valid until surrendered for cancellation, suspended, or revoked for violation of this chapter or any other laws or rules relating to the proper administration and management of a long-term care facility.

(3) If the board determines that preliminary qualifications set forth in 37-9-301 will have been met before the next examination, it may authorize the department to issue a temporary permit for a period of 180 days or until the scores of the next examination are announced. No temporary permit may be issued to an applicant after the date of the first examination for which he is eligible.

History: En. Sec. 4, Ch. 363, L. 1969; amd. Sec. 4, Ch. 483, L. 1973; amd. Sec. 308, Ch. 350, L. 1974; R.C.M. 1947, 66-3104(part).

37-9-303. Admission of licensees from other states. The department may issue, at the board's discretion, a nursing home administrator's license without examination to a person who holds a current license as a nursing home administrator from another jurisdiction if the board finds that the standards for licensure in the other jurisdiction are at least substantially equivalent to those prevailing in this state and that the applicant is otherwise qualified.

History: En. Sec. 11, Ch. 363, L. 1969; amd. Sec. 311, Ch. 350, L. 1974; R.C.M. 1947, 66-3111.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-9-304. Fees. (1) Each person who applies for licensure, whether by waiver, examination, or reciprocation, shall pay a fee prescribed by the board at the time of application.

(2) Each person licensed as a nursing home administrator shall pay a license fee in an amount fixed by the board. A license shall expire each year on a date set by rule of the department and shall be renewable annually upon timely payment of the license fee.

(3) Each person registered as an inactive nursing home administrator shall be required to pay a registration fee in the amount fixed by the board. An inactive registration shall expire each year on a date established by rule of the department and shall be renewable annually upon timely payment of the inactive registration fee.

(4) The fee for issuing a duplicate license shall be fixed by the board.

History: En. Sec. 5, Ch. 363, L. 1969; amd. Sec. 5, Ch. 483, L. 1973; R.C.M. 1947, 66-3105; amd. Sec. 22, Ch. 345, L. 1981; amd. Sec. 2, Ch. 390, L. 1983.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-9-305. Renewal of registration and license. Every holder of a nursing home administrator's registration and license shall renew it annually by payment of the required fee for the next subsequent year prior to the expiration date of his currently valid registration and license. Renewals of registrations or licenses shall be granted as a matter of course, providing the holder has completed a continuing education course prescribed or approved by the board; however, if the board finds, after due notice and hearing, that the applicant has acted or failed to act in such a manner or under circumstances as would constitute grounds for suspension or revocation of a registration and license, it shall not issue the renewal.

History: En. Sec. 10, Ch. 363, L. 1969; amd. Sec. 7, Ch. 483, L. 1973; R.C.M. 1947, 66-3110; amd. Sec. 3, Ch. 390, L. 1983.

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Suspension of license fees for persons in military service, 10-1-605.

37-9-306. Deposit of fees. Fees collected by the department under this chapter shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6). This fund may be used to pay the compensation and expenses of members of the board and other expenses necessary to administer this chapter.

History: En. Sec. 6, Ch. 363, L. 1969; amd. Sec. 309, Ch. 350, L. 1974; R.C.M. 1947, 66-3106; amd. Sec. 1, Ch. 277, L. 1983.

37-9-307 through 37-9-310 reserved.

37-9-311. Revocation and suspension. (1) The board shall, on receipt of a written and signed complaint, initiate an investigation of the matter contained in the complaint, subject to 37-1-101 and 37-1-121. At its next meeting, the complaint shall be presented to the board, together with the report of investigation and recommendations, and on this basis the board shall determine whether to bring charges and provide for a hearing.

(2) The board shall, for cause, after notice and hearing, revoke or suspend licenses previously issued if the individual holding the license is determined substantially to have failed to conform to the requirements of the standards set pursuant to 37-9-203(1). The board may in its discretion defer execution of its order of revocation or suspension for the purpose of permitting continuity of care for patients when the need for this continuity of care outweighs any harm or danger which might result from the failure of the nursing home administrator to be registered and licensed resulting in the closure of a long-term care facility.

(3) Denial of issuance or renewal, suspension, or revocation under this chapter is subject to review by the board on the timely written request for review within 30 days.

History: (1), (2)En. Sec. 9, Ch. 363, L. 1969; amd. Sec. 6, Ch. 483, L. 1973; amd. Sec. 310, Ch. 350, L. 1974; Sec. 66-3109, R.C.M. 1947; (3)En. Sec. 4, Ch. 363, L. 1969; amd. Sec. 4, Ch. 483, L. 1973; amd. Sec. 308, Ch. 350, L. 1974; Sec. 66-3104, R.C.M. 1947; R.C.M. 1947, 66-3104(part), 66-3109(part).

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-9-312. Violation. It shall be unlawful for any person to act or serve in the capacity of a nursing home administrator unless he is the holder of a registration and license as a nursing home administrator, issued in accordance with the provisions of this chapter. A person who violates the provisions of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500 or by imprisonment for not more than 6 months or by both such fine and imprisonment.

History: En. Sec. 12, Ch. 363, L. 1969; amd. Sec. 8, Ch. 483, L. 1973; R.C.M. 1947, 66-3112.

CHAPTER 10

OPTOMETRY

Part 1 — General

37-10-101. Definitions — practice of optometry.
37-10-102. Exemptions.
37-10-103. Use of drugs not prohibited by pharmacy law.
37-10-104. Public agencies — discrimination prohibited.
37-10-105. Purpose.

Part 2 — Board of Optometry

37-10-201. Organization — meetings.
37-10-202. Rulemaking power — seal.
37-10-203. Compensation of members — expenses — deposit of moneys.

37-10-204. Optometric oversight committee — members — duty to investigate complaints.

Part 3 — Licensing

37-10-301. Certificate required for practice — unlawful acts — injunction.
37-10-302. Examination — qualifications — application — issuance of certificate.
37-10-303. Reciprocity.
37-10-304. Course in use of diagnostic and therapeutic drugs required.
37-10-305. Repealed.
37-10-306. Certificate to be displayed in office.
37-10-307. Annual renewal — fee.
37-10-308. Continuing education required for license renewal.
37-10-309 and 37-10-310 reserved.
37-10-311. Revocation or suspension — unprofessional conduct.
37-10-312. Duty of county attorneys and attorney general.
37-10-313. Penalty for violations — deposit of fines.

Chapter Cross-References

Professional service corporations, Title 35, ch. 4.

Optometrist to report child abuse, 41-3-201.

Part 1
General

Part Cross-References

Duty of optometrist to report violation of Montana Elder Abuse Prevention Act, 52-3-811.

37-10-101. Definitions — practice of optometry. (1) The practice of optometry is the profession constituting the art and science of visual care and includes any one of the following acts:

(a) the optometric examination or optometric diagnosis of all of those physiological or anatomical parts or functions that consummate the process of human vision to ascertain the presence of abnormal conditions or functions that may be optometrically diagnosed, corrected, remedied, or relieved;

(b) the employment of any optometric means, excluding the use of surgery, for the purpose of detecting any condition of the process of vision that may have any significance in a complete optometric eye and vision examination, including the employment and administration of drugs topically applied for examination purposes, limited to cycloplegics, mydriatics, topical anesthetics, dyes such as fluorescein, and for emergency use only, miotics;

(c) the application or prescription of ophthalmic lenses, contact lenses, prisms, orthoptics, visual training, and any physical, mechanical, or physiological therapy and the furnishing or application of any prosthetic or therapeutic devices for the correction or relief of visual anomalies, excluding surgery;

(d) the administration, dispensation, and prescription of the oral analgesics codeine, propoxyphene, hydrocodone, and dihydrocodeine, alone or in combination with nonscheduled or nonregulated drugs; and

(e) the administration, dispensation, and prescription of those topical drugs approved by the board for use in ocular treatment limited to the anterior segment of the eye and adnexa. Glaucoma may not be treated.

(2) Subsection (1) does not prohibit an optometrist from removing from the eye or adnexa a foreign body that is not intraocular.

(3) Unless the context requires otherwise, in this chapter:

(a) "board" means the board of optometry provided for in 2-15-1846; and

(b) "department" means the department of commerce provided for in Title 2, chapter 15, part 18.

History: (1), (2)En. Ch. 138, L. 1907; Sec. 1607, Rev. C. 1907; re-en. Sec. 3155, R.C.M. 1921; re-en. Sec. 3155, R.C.M. 1935; amd. Sec. 1, Ch. 252, L. 1959; amd. Sec. 1, Ch. 361, L. 1977; Sec. 66-1301, R.C.M. 1947; (3)En. 66-1301.1 by Sec. 129, Ch. 350, L. 1974; Sec. 66-1301.1, R.C.M. 1947; R.C.M. 1947, 66-1301, 66-1301.1; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 2, Ch. 588, L. 1987; amd. Sec. 3, Ch. 121, L. 1993; amd. Sec. 1, Ch. 306, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 121 in (3)(a) substituted "optometry" for "optometrists"; and made minor changes in style.

Chapter 306 in first sentence of (1)(e), after "drugs", deleted "not including corticosteroids"; and made minor changes in style.

Cross-References

Exemption from physician's licensing requirement, 37-3-103.

37-10-102. Exemptions. Nothing in this chapter shall be construed to apply to:

(1) physicians and surgeons authorized to practice under the laws of the state of Montana;

(2) a person employed in the office of and acting under the direct personal supervision of a physician or surgeon;

(3) an optician performing the required mechanical work under an order or prescription signed by a duly licensed physician, surgeon, or optometrist;

(4) commissioned officers of the armed forces of the United States performing functions of this chapter in the line of their regular duty; or

(5) persons who sell spectacles or eyeglasses without attempting to traffic upon assumed skill in adapting them to the eye.

History: Ap. p. Ch. 138, L. 1907; Sec. 1621, Rev. C. 1907; re-en. Sec. 3169, R.C.M. 1921; re-en. Sec. 3169, R.C.M. 1935; amd. Sec. 6, Ch. 252, L. 1959; amd. Sec. 1, Ch. 512, L. 1977; Sec. 66-1316, R.C.M. 1947; Ap. p. Ch. 138, L. 1907; Sec. 1608, Rev. C. 1907; re-en. Sec. 3156, R.C.M. 1921; amd. Sec. 1, Ch. 171, L. 1925; re-en. Sec. 3156, R.C.M. 1935; amd. Sec. 1, Ch. 130, L. 1939; amd. Sec. 2, Ch. 252, L. 1959; amd. Sec. 1, Ch. 88, L. 1967; amd. Sec. 130, Ch. 350, L. 1974; Sec. 66-1302, R.C.M. 1947; R.C.M. 1947, 66-1302(part), 66-1316.

37-10-103. Use of drugs not prohibited by pharmacy law. The use of drugs by a licensed optometrist as stated in 37-10-101 is not prohibited by Title 37, chapter 7.

History: En. 66-1301.2 by Sec. 2, Ch. 361, L. 1977; R.C.M. 1947, 66-1301.2; amd. Sec. 3, Ch. 588, L. 1987.

37-10-104. Public agencies — discrimination prohibited. All agencies of the state and its subdivisions administering relief, public assistance, public welfare assistance, social security health insurance, or other health service under the laws of this state shall accept the services of licensed optometrists for any service covered by their licenses rendered to any person receiving benefits from said agents or bodies and shall pay for such services in the same manner as other ocular practitioners rendering similar services. None of the governmental agencies or agents, officials, or employees thereof, including the public schools, shall, in the performance of their duties, discriminate in any way among licensed ocular practitioners.

History: En. 66-1317 by Sec. 7, Ch. 252, L. 1959; R.C.M. 1947, 66-1317.

Cross-References

Illegal discrimination, Title 49, ch. 2.

Governmental Code of Fair Practices, Title 49, ch. 3.

37-10-105. Purpose. The legislature finds that the practice of the profession of optometry is a privilege and is not a natural right of individuals. The legislature considers it necessary, in the interests of protecting the public health, safety, and welfare and in order to provide for the optometric needs of the public, to provide laws and delegate rulemaking authority regarding the granting of licenses and their subsequent use so that the public is protected from the unprofessional, improper, unauthorized, and unqualified practice of optometry.

History: En. Sec. 2, Ch. 121, L. 1993.

Part 2

Board of Optometry

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1846.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-10-201. Organization — meetings. The board shall annually choose from its members a president and secretary, both of whom may administer oaths and take affidavits. The board shall meet at least once each year, at Helena or some other place within the state designated by the president and, in addition, whenever the president and secretary call a meeting at a location within the state. The department shall keep a record of the proceedings of the board, which must be open to public inspection.

History: En. Ch. 138, L. 1907; Sec. 1610, Rev. C. 1907; re-en. Sec. 3158, R.C.M. 1921; amd. Sec. 3, Ch. 171, L. 1925; amd. Sec. 1, Ch. 44, L. 1927; re-en. Sec. 3158, R.C.M. 1935; amd. Sec. 132, Ch. 350, L. 1974; R.C.M. 1947, 66-1304; amd. Sec. 4, Ch. 121, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 121 in second sentence, after "place", inserted "within the state", after "president" deleted "on the fourth Monday of July", after "whenever" deleted "and wherever", and after "meeting" inserted "at a location within the state"; and made minor changes in style. Amendment effective March 18, 1993.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Duty of Department to provide facilities, 37-1-101.

Disrupting meeting as disorderly conduct, 45-8-101.

37-10-202. Rulemaking power — seal. (1) The board may adopt rules for the regulation, conduct, supervision, and procedure governing all applicants for certificates of registration as optometrists and the practice of optometry not inconsistent with the provisions of this chapter.

(2) The board shall have a common seal.

History: En. Ch. 138, L. 1907; Sec. 1609, Rev. C. 1907; re-en. Sec. 3157, R.C.M. 1921; amd. Sec. 2, Ch. 171, L. 1925; re-en. Sec. 3157, R.C.M. 1935; amd. Sec. 2, Ch. 130, L. 1939; amd. Sec. 131, Ch. 350, L. 1974; R.C.M. 1947, 66-1303.

Cross-References

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation for administrative purposes only, 2-15-121.

Quasi-judicial boards, 2-15-124.

Duties of boards, 37-1-131.

37-10-203. Compensation of members — expenses — deposit of moneys. (1) Each member of the board is entitled to receive compensation and travel expenses as provided for in 37-1-133.

(2) Money collected by the department shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Ch. 138, L. 1907; Sec. 1617, Rev. C. 1907; re-en. Sec. 3165, R.C.M. 1921; amd. Sec. 5, Ch. 171, L. 1925; re-en. Sec. 3165, R.C.M. 1935; amd. Sec. 5, Ch. 252, L. 1959; amd. Sec. 121, Ch. 147, L. 1963; amd. Sec. 23, Ch. 93, L. 1969; amd. Sec. 136, Ch. 350, L. 1974; amd. Sec. 32, Ch. 439, L. 1975; R.C.M. 1947, 66-1311; amd. Sec. 15, Ch. 474, L. 1981; amd. Sec. 1, Ch. 277, L. 1983.

37-10-204. Optometric oversight committee — members — duty to investigate complaints. (1) (a) There is an optometric oversight committee composed of five members. The members are:

(i) two physicians, one of whom must be an ophthalmologist and the other a member of the board of medical examiners, who are appointed by the board of medical examiners;

(ii) two optometrists who are members of the board of optometrists and who are appointed by the board of optometrists; and

(iii) one pharmacist who is a member of the board of pharmacy and who is appointed by the board of pharmacy.

(b) The members of the committee shall elect a chairman from their members. Members of the committee are entitled to compensation and travel expenses as provided for in 37-1-133. Members' compensation and travel expenses and committee clerical and administrative expenses must be paid by the board of optometrists from funds appropriated to the board for its ordinary operations.

(2) A meeting of the committee must be called by any of the represented boards upon receipt of a signed written complaint regarding the diagnosis, treatment, or management of ocular disease as it relates to therapeutic drug usage by an optometrist.

(3) Each of the represented boards shall, upon receipt of a complaint concerning the diagnosis, treatment, or management of ocular disease by an optometrist, forward a copy of the complaint to the members of the committee. Each member of the committee shall, subject to applicable confidentiality requirements, have access to all records related to therapeutic drug usage of the board of optometrists concerning the optometrist against whom a complaint has been filed.

(4) The committee may investigate any complaint that it believes has a valid basis. The investigation may include:

(a) requiring the complainant, if injuries have been alleged, to submit to a physical examination;

(b) examination of hospital and other medical records;

(c) interviews of the complainant and the accused optometrist; and

(d) other avenues of inquiry tending to prove or disprove the complaint but that do not raise the formality of the investigation to the level of a contested case administrative hearing.

(5) Based on the findings of its investigation, the committee may:

(a) recommend to the board of optometrists that no further action be taken regarding the complaint;

(b) recommend to the board of optometrists that no action be taken against the subject optometrist, but that the board should review its rules and statutory provisions relating to the administration of prescription drugs by optometrists to amend the rules or propose legislation to prevent similar occurrences; or

(c) recommend that the board of optometrists initiate disciplinary proceedings.

(6) If the committee recommends that the board of optometrists initiate disciplinary proceedings, the board must take necessary action to begin disciplinary proceedings.

(7) (a) A copy of the committee's decision must be mailed to the complainant.

(b) If the committee makes a decision under subsection (5)(b) or (5)(c), the board of optometrists shall respond to the committee's decision in writing. The response must be addressed to the board of medical examiners and the board of pharmacy.

History: **En. Sec. 6, Ch. 588, L. 1987.**

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-10-301. Certificate required for practice — unlawful acts — injunction. (1) It is unlawful for a person to:

(a) practice optometry in this state unless that person has first obtained a certificate of registration;

(b) sell, barter, or offer to sell or barter a certificate of registration issued by the department;

(c) purchase or procure by barter a certificate of registration with intent to use it as evidence of the holder's qualification to practice optometry;

(d) materially alter with fraudulent intent a certificate of registration;

(e) use or attempt to use a certificate of registration that has been purchased, fraudulently issued, counterfeited, or materially altered as a valid certificate of registration;

(f) practice optometry under a false or assumed name;

(g) willfully make a materially false statement in an application for a certificate of registration;

(h) advertise by displaying a sign or by otherwise claiming to be an optometrist without having at the time a valid certificate of registration;

(i) replace or duplicate ophthalmic lenses with or without a prescription or to dispense ophthalmic lenses from prescriptions without having at the time a valid certificate of registration as an optometrist; however, this subsection does not prevent an optical mechanic from:

(i) doing the merely mechanical work on an ophthalmic lens that is ordered on a prescription signed by a registered optometrist and is dispensed only by the optometrist or a person employed by the optometrist and who does so in the office of and under the direct personal supervision of an optometrist; or

(ii) replacing or duplicating an existing lens for glasses;

(j) take or make measurements for the purpose of fitting or adapting ophthalmic lenses to the human eye without having at the time a valid certificate of registration. A person who takes or makes measurements or uses mechanical devices for this purpose or who, in the sale of spectacles, eyeglasses, or lenses, uses in the testing of the eyes lenses other than the lenses actually sold is practicing optometry. However, this section does not apply to the prescriptions of qualified optometrists when sent to a recognized optical laboratory.

(k) measure, fit, or adapt a lens to direct, contiguous contact to the human eyeball without having at the time a valid certificate of registration as an optometrist.

(2) When the board has reasonable cause to believe that a person is violating this section or a rule issued under this chapter, it may, in addition to other remedies provided in this chapter, bring an action for injunctive relief in district court in the county where the violation occurs to enjoin the person from engaging in or continuing the violation. The department may employ legal counsel to prosecute these actions. In these actions and on notice and hearing, an order or judgment may be entered awarding a temporary restraining order or final injunction as considered proper by the judge of the district court in the county where the violation occurred.

History: En. Ch. 138, L. 1907; Sec. 1608, Rev. C. 1907; re-en. Sec. 3156, R.C.M. 1921; amd. Sec. 1, Ch. 171, L. 1925; re-en. Sec. 3156, R.C.M. 1935; amd. Sec. 1, Ch. 130, L. 1939; amd. Sec. 2, Ch. 252, L. 1959; amd. Sec. 1, Ch. 88, L. 1967; amd. Sec. 130, Ch. 350, L. 1974; R.C.M. 1947, 66-1302(part); amd. Sec. 3, Ch. 66, L. 1981; amd. Sec. 4, Ch. 543, L. 1981; amd. Sec. 5, Ch. 121, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 121 in (1)(g), after "application", deleted "for an examination by the department"; and made minor changes in style.

Cross-References

"Willfully" defined, 1-1-204.

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

37-10-302. Examination — qualifications — application — issuance of certificate. (1) The board shall adopt rules relative to and governing the qualifications of applicants for certificates of registration as optometrists. If the applicant does not meet the requirements of the rules, the applicant is not eligible to take an examination to practice optometry in this state. If the applicant meets the requirements of the rules, the applicant must pass an examination given by the national board of examiners in optometry on behalf of the department, subject to 37-1-101. Examinations must be practical in character and designed to ascertain the applicant's fitness to practice the profession of optometry and must be conducted in the English language. The department shall publish and distribute the examination requirements for a certificate to practice optometry in this state. The board may accept the grades an applicant has received in the written examinations given by the national board of examiners in optometry.

(2) A person is not eligible to receive a certificate of registration unless that person is 18 years of age or older and of good moral character.

(3) A person is not eligible to receive a certificate of registration unless that person has certificates of graduation from an accredited high school and from a school of optometry in which the practice and science of optometry is taught in a course of study covering 8 semesters or 4 years of actual attendance and that is accredited by the international association of boards of examiners in optometry.

(4) A person desiring a certificate of registration shall file an application, in the manner prescribed by the board, and pay a fee prescribed by the board.

(5) A person who successfully passes the examination administered by the national board of examiners in optometry and who has met the requirements for qualification as an optometrist must be registered in a register kept by the department and, on the payment of a fee prescribed by the board, must receive a certificate of registration signed by the members of the board.

History: En. Ch. 138, L. 1907; Sec. 1611, Rev. C. 1907; amd. Sec. 1, Ch. 128, L. 1917; re-en. Sec. 3159, R.C.M. 1921; amd. Sec. 4, Ch. 171, L. 1925; re-en. Sec. 3159, R.C.M. 1935; amd. Sec. 3, Ch. 130, L. 1939; amd. Sec. 3, Ch. 252, L. 1959; amd. Sec. 24, Ch. 94, L. 1973; amd. Sec. 133, Ch. 350, L. 1974; R.C.M. 1947, 66-1305(1) thru (5); amd. Sec. 3, Ch. 241, L. 1981; amd. Sec. 23, Ch. 345, L. 1981; amd. Sec. 6, Ch. 121, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 121 in (1), in third sentence before "department", inserted "national board of examiners in optometry on behalf of the"; in (2) and at beginning of (3), after "eligible to", substituted "receive a certificate of registration" for "take the examination"; deleted former second sentence of (3) that read: "Instead of the certificates of graduation, an applicant for examination may, with like effect, furnish an affidavit that he has practiced optometry exclusively for a period of at least 6 years in some other state or states"; in (4), near beginning after "desiring", substituted "a certificate of registration" for "to be examined in optometry" and near middle, after "board", substituted "pay a fee prescribed by the board" for "at least 4 weeks before the examination is held, and a fee prescribed by the board shall accompany the application"; in (5), near beginning after "examination", inserted "administered by the national board of examiners in optometry and who has met the requirements for qualification as an optometrist"; and made minor changes in style. Amendment effective March 18, 1993.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Duty of Department to grade examinations, 37-1-101.

Standardized forms, 37-1-104.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-10-303. Reciprocity. If an applicant for a certificate of registration has been admitted to practice optometry in another state and has attained an average of 75% in the examination in that state, that person may, at the discretion of the board, be granted a certificate to practice optometry in this state without examination, on payment of all fees, if the state in which the applicant is admitted to practice offers equal privileges to applicants for certificates of registration from this state.

History: En. Ch. 138, L. 1907; Sec. 1611, Rev. C. 1907; amd. Sec. 1, Ch. 128, L. 1917; re-en. Sec. 3159, R.C.M. 1921; amd. Sec. 4, Ch. 171, L. 1925; re-en. Sec. 3159, R.C.M. 1935; amd. Sec. 3, Ch. 130, L. 1939; amd. Sec. 3, Ch. 252, L. 1959; amd. Sec. 24, Ch. 94, L. 1973; amd. Sec. 133, Ch. 350, L. 1974; R.C.M. 1947, 66-1305(6); amd. Sec. 7, Ch. 121, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 121 near middle, after "practice", substituted "optometry" for "his profession" and substituted reference to the state in which the applicant is admitted to practice for reference to the state from which the applicant comes; and made minor changes in style.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-10-304. Course in use of diagnostic and therapeutic drugs required. (1) (a) In addition to the requirements of 37-10-302 or 37-10-303, whichever is applicable, each person desiring to commence the practice of optometry shall satisfactorily complete a course prescribed by the board of medical examiners with consultation and approval by the board of optometrists with particular emphasis on the topical application of diagnostic agents to the eye for the purpose of examination of the human eye and the analysis of ocular functions.

(b) A person presently licensed to practice optometry who wishes to employ diagnostic agents must satisfactorily complete a course referred to in subsection (1)(a) and must pass an examination as provided in subsection (1)(d).

(c) The course referred to in subsection (1)(a) must be conducted by an institution accredited by a regional or professional accreditation organization which is recognized or approved by the national commission on accrediting or the United States commissioner of education. The course must also be approved by the board.

(d) The board shall provide for an examination in competency in the use of diagnostic drugs and shall issue a certificate to those applicants who pass such examination.

(2) (a) In addition to the requirements of 37-10-302 or 37-10-303, whichever is applicable, each person desiring to commence the practice of optometry shall:

(i) pass an examination, of the international association of boards of examiners in optometry, on the diagnosis, treatment, and management of ocular disease; or

(ii) take a course and pass an examination in the diagnosis, treatment, and management of ocular diseases. The course and examination must be conducted by an institution accredited by a regional or professional accreditation organization which is recognized or approved by the national commission on accrediting or the United States commissioner of education. The course and examination must also be approved by the board.

(b) A person presently licensed to practice optometry who wishes to employ therapeutic pharmaceutical agents must meet the requirements of subsection (2)(a).

(c) The board shall:

(i) provide for an examination in competency in the diagnosis, treatment, and management of therapeutic pharmaceutical agents; and

(ii) issue a certificate to an applicant who passes such examination.

History: En. 66-1305.1 by Sec. 3, Ch. 361, L. 1977; R.C.M. 1947, 66-1305.1; amd. Sec. 4, Ch. 588, L. 1987.

Cross-References

Dispensing of drugs by health care practitioners, Title 37, ch. 2, part 1.

Board of Medical Examiners, Title 37, ch. 3, part 2.

Dangerous drugs, Title 45, ch. 9.

37-10-305. Repealed. Sec. 4, Ch. 66, L. 1981.

History: En. Ch. 138, L. 1907; Sec. 1614, Rev. C. 1907; re-en. Sec. 3162, R.C.M. 1921; re-en. Sec. 3162, R.C.M. 1935; amd. Sec. 4, Ch. 130, L. 1939; amd. Sec. 135, Ch. 350, L. 1974; R.C.M. 1947, 66-1308.

37-10-306. Certificate to be displayed in office. Every person to whom a certificate of examination or registration is granted shall display the same in a conspicuous part of his office wherein the practice of optometry is conducted.

History: En. Ch. 138, L. 1907; Sec. 1616, Rev. C. 1907; re-en. Sec. 3164, R.C.M. 1921; re-en. Sec. 3164, R.C.M. 1935; R.C.M. 1947, 66-1310.

37-10-307. Annual renewal — fee. A registered optometrist who desires to continue the practice of optometry in this state shall, before the license expiration date established by rule of the department, annually pay to the department a renewal fee prescribed by the board in return for which a renewal of registration shall be issued. If a person fails or neglects to procure his annual renewal of registration, his certificate of registration shall be revoked by the board; however, no certificate of registration may be revoked without 90 days' notice having been given to the delinquent, who within this period may renew his certificate of registration on the payment of the renewal fee with a penalty prescribed by the board.

History: En. Ch. 138, L. 1907; Sec. 1613, Rev. C. 1907; amd. Sec. 2, Ch. 128, L. 1917; re-en. Sec. 3161, R.C.M. 1921; amd. Sec. 4 1/2, Ch. 171, L. 1925; re-en. Sec. 3161, R.C.M. 1935; amd. Sec. 4, Ch. 252, L. 1959; amd. Sec. 120, Ch. 147, L. 1963; amd. Sec. 1, Ch. 75, L. 1971; amd. Sec. 134, Ch. 350, L. 1974; R.C.M. 1947, 66-1307; amd. Sec. 24, Ch. 345, L. 1981; amd. Sec. 4, Ch. 390, L. 1983.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-10-308. Continuing education required for license renewal. An optometrist licensed pursuant to 37-10-302 or 37-10-303 is required to attend not less than 12 hours annually of scientific clinics, forums, or optometric educational studies as may be provided or approved by the board as a prerequisite for license renewal. A copy of this section must be sent to each licensee by the department prior to the license renewal date each year. The board may exempt from this requirement those licensees who submit satisfactory proof that they were prevented from attending educational programs during the preceding year due to illness or for other good reason.

History: En. 66-1318 by Sec. 1, Ch. 79, L. 1971; amd. Sec. 139, Ch. 350, L. 1974; R.C.M. 1947, 66-1318; amd. Sec. 8, Ch. 121, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 121 at beginning substituted "An optometrist licensed pursuant to 37-10-302 or 37-10-303" for "A licensed optometrist in active practice in this state"; and made minor changes in style.

37-10-309 and 37-10-310 reserved.

37-10-311. Revocation or suspension — unprofessional conduct. (1) The board may revoke or suspend a certificate of registration or may reprimand, prescribe probation for, or censure the holder of a certificate of registration for:

(a) physical or mental incompetence;

(b) gross malpractice or repeated malpractice;

(c) a violation of any of the provisions of this chapter or rules or orders of the board; or

(d) unprofessional conduct.

(2) Unprofessional conduct includes:

(a) obtaining a fee by fraud or misrepresentation;

(b) employing, directly or indirectly, a suspended or unlicensed optometrist to perform work covered by this chapter;

(c) directly or indirectly accepting employment to practice optometry from a person not having a valid certificate of registration as an optometrist or accepting employment to practice optometry for or from a company or corporation;

(d) permitting another to use the holder's certificate of registration;

(e) soliciting or sending a solicitor from house to house;

(f) treatment or advice in which untruthful or improbable statements are made;

(g) professing to cure nonocular disease;

(h) advertising in which ambiguous or misleading statements are made;

(i) the use in advertising of the expression "eye specialist" or "specialist on eyes" in connection with the name of an optometrist. This chapter does not prohibit legitimate or truthful advertising by a registered optometrist.

(j) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution, or organization, including fraud, misrepresentation, or a claim for benefits under Title 39, chapter 71 or 72.

(3) Before a certificate is revoked or suspended or before the holder is reprimanded, placed on probation, or censured, the holder must be given a notice and an opportunity for a hearing.

(4) Any optometrist convicted a second time for violation of the provisions of this chapter or whose certificate of registration or examination has been revoked or suspended a second time may not be permitted to practice optometry in this state.

History: (1) thru (3)En. Ch. 138, L. 1907; Sec. 1618, Rev. C. 1907; amd. Sec. 3, Ch. 128, L. 1917; re-en. Sec. 3166, R.C.M. 1921; amd. Sec. 6, Ch. 171, L. 1925; re-en. Sec. 3166, R.C.M. 1935; amd. Sec. 5, Ch. 130, L. 1939; amd. Sec. 137, Ch. 350, L. 1974; Sec. 66-1312, R.C.M. 1947; (4)En. Sec. 3166-A by Sec. 2, Ch. 44, L. 1927; re-en. Sec. 3166.1, R.C.M. 1935; Sec. 66-1313, R.C.M. 1947; R.C.M. 1947, 66-1312, 66-1313; amd. Sec. 5, Ch. 543, L. 1981; amd. Sec. 5, Ch. 588, L. 1987; amd. Sec. 9, Ch. 121, L. 1993; amd. Sec. 13, Ch. 619, L. 1993.

Compiler's Comments

1993 Amendments — Composite Section: Chapter 121 in (1), in introductory clause after "revoke", inserted "or suspend" and near middle, after "registration", inserted "or may reprimand, prescribe probation for, or censure the holder of a certificate of registration"; in (3), after "revoked", inserted "or suspended or before the holder is reprimanded, placed on probation, or censured"; in (4), after "revoked", inserted "or suspended"; and made minor changes in style.

Chapter 619 inserted (2)(j) authorizing revocation of certificate of registration for fraud, misrepresentation, or deception for workers' compensation or occupational disease benefits; and made minor changes in style. Amendment effective July 1, 1993.

A style change in (2)(d) was slightly different in the two chapters. The codifier chose the more appropriate of the two.

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unethical conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.
Duty of director in investigation of unethical conduct, 37-1-121.
Duty of Board to adopt rules on conduct, 37-1-131.
Licensing investigation and review — record access, 37-1-135.
Disciplinary authority of boards — injunctions, 37-1-136.
Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-10-312. Duty of county attorneys and attorney general. It is the duty of a county attorney of a county wherein a violation under this chapter, except 37-10-104, is alleged to have occurred to prosecute such violation in the district court in said county. The state attorney general shall appear as counsel for the board in the state supreme court.

History: En. Ch. 138, L. 1907; Sec. 1620, Rev. C. 1907; re-en. Sec. 3168, R.C.M. 1921; re-en. Sec. 3168, R.C.M. 1935; amd. Sec. 1, Ch. 204, L. 1965; R.C.M. 1947, 66-1315.

Cross-References
Duties of Attorney General, 2-15-501.
Prosecutorial duties of County Attorney, 7-4-2712.
Duties of County Attorney relating to state matters, 7-4-2716.

37-10-313. Penalty for violations — deposit of fines. A person who violates this chapter, except 37-10-104, or the rules of the board is guilty of a misdemeanor and on conviction shall be fined not less than $200 and not more than $500 or imprisoned in the county jail not exceeding 6 months or both fined and imprisoned. Fines collected, except those collected by a justice's court, shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Ch. 138, L. 1907; Sec. 1619, Rev. C. 1907; re-en. Sec. 3167, R.C.M. 1921; amd. Sec. 8, Ch. 171, L. 1925; re-en. Sec. 3167, R.C.M. 1935; amd. Sec. 6, Ch. 130, L. 1939; amd. Sec. 122, Ch. 147, L. 1963; amd. Sec. 138, Ch. 350, L. 1974; R.C.M. 1947, 66-1314; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 25, Ch. 557, L. 1987.

Cross-References
Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.
Criminal responsibility of corporations, 45-2-311.
Accountability for conduct of corporation, 45-2-312.

CHAPTER 11

PHYSICAL THERAPY

Part 1 — General

37-11-101. Definitions.
37-11-102. Exemptions.
37-11-103. Restrictions on scope of practice.
37-11-104. Physical therapy — evaluation and treatment.
37-11-105. Supervision of physical therapist assistants.
37-11-106. Application and administration of topical medications — prescription, purchasing, and recordkeeping requirements.
37-11-107. Board adoption of protocols.

Part 2 — Duties of Board and Department

37-11-201. General powers — rulemaking power — records.
37-11-202. Investigation and report of violations.
37-11-203. Travel expense — deposit of fees.

Part 3 — Licensing

37-11-301. Unauthorized representation as licensed therapist.
37-11-302. False oath or fraudulent representation to obtain license.
37-11-303. Qualifications of applicants for license.
37-11-304. Application for examination — fee.
37-11-305. Examination — scope.
37-11-306. Issuance of license — certificate as evidence.
37-11-307. Applicants licensed in other states.
37-11-308. Annual renewal of license — fee.
37-11-309. Temporary license.
37-11-310. Foreign-trained applicants.
37-11-311. Display of license.
37-11-312 through 37-11-319 reserved.
37-11-320. Duty to report violations — immunity from liability.
37-11-321. Refusal to issue or renew license.
37-11-322. Penalties.

Chapter Cross-References

Professional service corporations, Title 35, ch. 4.

Part 1
General

37-11-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of physical therapy examiners provided for in 2-15-1858.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Hearing" means the adjudicative proceeding concerning the issuance, denial, suspension, or revocation of a license, after which the appropriate action toward an applicant or licensee is to be determined by the board.

(4) "Physical therapist" or "physiotherapist" means a person who practices physical therapy.

(5) "Physical therapist assistant" means a person who is a graduate of an accredited curriculum approved by the board and who assists a physical therapist in the practice of physical therapy and whose activities require an understanding of physical therapy.

(6) "Physical therapy" means the evaluation, treatment, and instruction of human beings to detect, assess, prevent, correct, alleviate, and limit physical disability, bodily malfunction and pain, injury, and any bodily or mental conditions by the use of therapeutic exercise, prescribed topical medications, and rehabilitative procedures for the purpose of preventing, correcting, or alleviating a physical or mental disability.

(7) "Physical therapy aide" means a person who aids in the practice of physical therapy and whose activities require on-the-job training and supervision by a licensed physical therapist who must be available for periodic checks during any procedure or treatment involving a patient.

(8) "Physical therapy practitioner", "physical therapy specialist", "physiotherapy practitioner", or "manual therapists" are equivalent terms,

and any derivation of the above or any letters implying the above are equivalent terms; any reference to any one of them in this chapter includes the others but does not include certified corrective therapists or massage therapists.

(9) "Physical therapy student" or "physical therapy intern" means an individual enrolled in an accredited physical therapy curriculum and who, as part of his professional, educational, and clinical training, is practicing in a physical therapy setting under the direction, guidance, and observation of a licensed physical therapist.

(10) "Topical medications" means medications applied locally to the skin and includes only medications listed in 37-11-106(2) for which a prescription is required under state or federal law.

History: En. Sec. 1, Ch. 39, L. 1961; amd. Sec. 241, Ch. 350, L. 1974; R.C.M. 1947, 66-2501(part); amd. Secs. 3, 5, Ch. 491, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 237, L. 1991.

37-11-102. Exemptions. This chapter may not be construed to limit or regulate any other business or profession or any services rendered or performed in connection with another business or profession, including osteopathy, chiropractic, chiropractic physiotherapy, or massage therapists, to the extent they do massage.

History: En. Sec. 13, Ch. 39, L. 1961; R.C.M. 1947, 66-2513(part); amd. Sec. 4, Ch. 237, L. 1991.

37-11-103. Restrictions on scope of practice. Nothing in this chapter shall be construed as authorizing a physical therapist, whether licensed or not, to practice medicine, osteopathy, or chiropractic, dentistry, or podiatry; nor shall Title 37, chapter 11, be construed to limit or regulate any other business or profession or any services rendered or performed in connection with physical therapy.

History: En. Sec. 13, Ch. 39, L. 1961; R.C.M. 1947, 66-2513(part); amd. Sec. 7, Ch. 491, L. 1979.

Cross-References

Exemption from physician's licensing requirement, 37-3-103.

37-11-104. Physical therapy — evaluation and treatment. (1) Physical therapy evaluation includes the administration, interpretation, and evaluation of tests and measurements of bodily functions and structures; the development of a plan of treatment; consultative, educational, and other advisory services; and instruction and supervision of supportive personnel.

(2) Treatment employs, for therapeutic effects, physical measures, activities and devices, for preventive and therapeutic purposes, exercises, rehabilitative procedures, massage, mobilization, and physical agents including but not limited to mechanical devices, heat, cold, air, light, water, electricity, and sound.

(3) The evaluation and treatment procedures listed in subsections (1) and (2) may be performed by a licensed physical therapist without referral.

History: En. Sec. 4, Ch. 491, L. 1979; amd. Sec. 1, Ch. 240, L. 1981; amd. Sec. 3, Ch. 55, L. 1987.

37-11-105. Supervision of physical therapist assistants. A physical therapist assistant must practice under the direct supervision of a licensed physical therapist who is responsible for and participates in a patient's care.

History: En. Sec. 6, Ch. 491, L. 1979.

37-11-106. Application and administration of topical medications — prescription, purchasing, and recordkeeping requirements. (1) A licensed physical therapist may apply or administer topical medications by:

(a) direct application;

(b) iontophoresis, a process whereby topical medications are applied through the use of electricity; or

(c) phonophoresis, a process whereby topical medications are applied through the use of ultrasound.

(2) A licensed physical therapist may apply or administer the following topical medications:

(a) bactericidal agents;

(b) debriding agents;

(c) anesthetic agents;

(d) anti-inflammatory agents;

(e) antispasmodic agents; and

(f) adrenocortico-steroids.

(3) Topical medications applied or administered by a physical therapist must be prescribed on a specific or standing basis by a licensed medical practitioner authorized to order or prescribe topical medications and must be purchased from a pharmacy certified under 37-7-321. Topical medications dispensed under this section must comply with packaging and labeling guidelines developed by the board of pharmacists under Title 37, chapter 7.

(4) Appropriate recordkeeping is required of a physical therapist who applies or administers topical medications as authorized in this section.

History: En. Sec. 2, Ch. 237, L. 1991.

37-11-107. Board adoption of protocols. The board, in consultation with the board of medical examiners and the board of pharmacy, shall by rule adopt written protocols for each class of topical medication listed in 37-11-106(2) for which a prescription is required under state or federal law. Protocols must include a description of each topical medication and its actions, indications, and contraindications, as well as the proper procedure and technique for the application or administration of the medication.

History: En. Sec. 3, Ch. 237, L. 1991.

Part 2

Duties of Board and Department

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1859.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-11-201. General powers — rulemaking power — records. (1) The board may:

(a) adopt rules to carry this chapter into effect;

(b) grant, suspend, and revoke licenses;

(c) issue subpoenas requiring the attendance of witnesses or the production of books and papers; and

(d) take any other disciplinary action necessary to protect the public.

(2) The board shall:

(a) examine applicants for licenses three times a year at reasonable places and times determined by the board;

(b) review the qualifications of applicants who are approved for examination for licensure; and

(c) conduct written examinations that measure the qualifications of individual applicants along with any oral or practical examinations when determined by the board to be appropriate.

(3) The department shall keep a record of the board's proceedings under this chapter and a register of persons licensed under it. The register must show the name of every living licensed physical therapist, his last-known place of business, last-known place of residence, and the date and number of his license and certificate as a licensed physical therapist.

(4) The department shall, during the month of April every year in which the renewal of licenses is required, compile a list of licensed physical therapists authorized to practice physical therapy in the state and shall mail, upon request, a copy of that list to the superintendent of every known hospital and every person licensed to practice medicine and surgery in the state. An interested person in the state is entitled to obtain a copy of the list on application to the department and payment of an amount not in excess of the cost of the list so furnished.

(5) The department may change addresses and surnames on the licensee's records only on the specific written request by the individual licensee.

History: En. Sec. 14, Ch. 39, L. 1961; amd. Sec. 249, Ch. 350, L. 1974; R.C.M. 1947, 66-2514; amd. Sec. 1, Ch. 449, L. 1979; amd. Sec. 8, Ch. 491, L. 1979; amd. Sec. 1, Ch. 115, L. 1991.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Power of agencies to issue subpoenas, 2-4-104.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Public records, Title 2, ch. 6.

Prohibition on distribution or sale of mailing lists, 2-6-109.

Allocation for administrative purposes only, 2-15-121.

Quasi-judicial boards, 2-15-124.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.

Duties of Department, 37-1-101.

Duties of boards, 37-1-131.

37-11-202. Investigation and report of violations. (1) The board shall:

(a) investigate every alleged violation of this chapter coming to its notice;

(b) report to the proper authority all cases that, in the judgment of the board, warrant prosecution;

(c) formulate a written complaint process for use in reporting alleged violations;

(d) assist the proper county attorney or the attorney general in the prosecution of all persons who violate any provision of Title 37, chapter 11.

(2) The attorney general shall serve as attorney for the board.

History: En. Sec. 15, Ch. 39, L. 1961; R.C.M. 1947, 66-2515; amd. Sec. 9, Ch. 491, L. 1979.

Cross-References

Duties of Attorney General, 2-15-501.

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Licensing investigation and review — record access, 37-1-135.

37-11-203. Travel expense — deposit of fees. (1) Each board member shall receive compensation and travel expenses as provided for in 37-1-133.

(2) All fees collected by the department shall be deposited in the state special revenue account for the use of the board, subject to 37-1-101(6). The department shall keep an accurate account of funds received and expenditures made from the account.

(3) The board of medical examiners shall transfer funds in the state special revenue account collected after January 1, 1979, which were derived from the examination and licensure or relicensure of physical therapists in this state to the state special revenue account designated as the "physical therapist account".

History: En. Sec. 10, Ch. 491, L. 1979; amd. Sec. 16, Ch. 474, L. 1981; amd. Sec. 1, Ch. 277, L. 1983.

Part 3
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-11-301. Unauthorized representation as licensed therapist. A person who is not licensed under this chapter as a physical therapist or whose license has been suspended or revoked or whose license has lapsed and has not been revived who uses in connection with his name the words or letters "L.P.T.", "Licensed Physical Therapist", "P.T.", "Physical Therapist", "R.P.T.", "Registered Physical Therapist", or any other letters, words, or insignia indicating or implying that he is a licensed physical therapist or who in any way, orally or in writing or in print or by sign, directly or by implication, represents himself as a physical therapist shall be guilty of a misdemeanor.

History: En. Sec. 11, Ch. 39, L. 1961; R.C.M. 1947, 66-2511; amd. Sec. 11, Ch. 491, L. 1979.

37-11-302. False oath or fraudulent representation to obtain license. A person who makes a willfully false oath or affirmation in any case in which an oath or affirmation is required by this chapter or who obtains or attempts to obtain a license by any fraudulent representation shall be guilty of a misdemeanor.

History: En. Sec. 12, Ch. 39, L. 1961; R.C.M. 1947, 66-2512.

Cross-References

Oath defined, 1-1-201.

Oaths, Title 1, ch. 6.

Perjury, 45-7-201.

False swearing, 45-7-202.

37-11-303. Qualifications of applicants for license. To be eligible for a license as a physical therapist, an applicant must:

(1) be of good moral character and at least 18 years of age;

(2) have graduated from an accredited school of physical therapy approved by the board;

(3) either:

(a) pass to the satisfaction of the board a written examination prescribed by the board and, if considered necessary, an oral interview to determine the fitness of the applicant to practice as a physical therapist; or

(b) be entitled to a license without examination under 37-11-307.

History: En. Sec. 2, Ch. 39, L. 1961; amd. Sec. 8, Ch. 168, L. 1971; amd. Sec. 242, Ch. 350, L. 1974; amd. Sec. 24, Ch. 101, L. 1977; R.C.M. 1947, 66-2502; amd. Sec. 12, Ch. 491, L. 1979; amd. Sec. 1, Ch. 456, L. 1981.

Cross-References

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-11-304. Application for examination — fee. (1) Unless entitled to a license under 37-11-307, a person who desires to be licensed as a physical therapist shall apply to the department in writing, on a form furnished by the department. He shall:

(a) embody in that application evidence under oath, satisfactory to the board, of his possessing the qualifications preliminary to the examination required by 37-11-303; and

(b) pay to the department at the time of filing his application a fee as established by the board by rule. The fee must be commensurate with the cost of the examination and its administration and must be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

(2) Anyone failing to pass the required examination on his first attempt is entitled to sit for a second examination and, if he fails the second examination, to sit for a third examination.

History: En. Sec. 3, Ch. 39, L. 1961; amd. Sec. 133, Ch. 147, L. 1963; amd. Sec. 1, Ch. 227, L. 1974; amd. Sec. 243, Ch. 350, L. 1974; R.C.M. 1947, 66-2503; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 115, L. 1991.

Cross-References

Oath defined, 1-1-201.

Proof of execution, Title 1, ch. 5, part 3.

Power of notary to take acknowledgments, 1-5-416.

Oaths, Title 1, ch. 6.

Affidavits, Title 26, ch. 1, part 10.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Perjury, 45-7-201.

False swearing, 45-7-202.

37-11-305. Examination — scope. The department shall, subject to 37-1-101, examine applicants for licenses as physical therapists at times and places the board determines. The examinations shall embrace subjects the board considers necessary to determine the applicant's fitness.

History: En. Sec. 6, Ch. 39, L. 1961; amd. Sec. 245, Ch. 350, L. 1974; R.C.M. 1947, 66-2506.

37-11-306. Issuance of license — certificate as evidence. The department shall license as a physical therapist each applicant who proves to the satisfaction of the board his fitness for a license under this chapter. The department shall issue to each person licensed a license certificate, which is prima facie evidence of the right of the person to whom it is issued to represent himself as a licensed physical therapist, subject to the conditions and limitations of this chapter.

History: En. Sec. 7, Ch. 39, L. 1961; amd. Sec. 246, Ch. 350, L. 1974; R.C.M. 1947, 66-2507.

37-11-307. Applicants licensed in other states. The board may, in its discretion, authorize the department to license as a physical therapist, without examination, on the payment of the required fee as established by the board, an applicant for license who is a physical therapist licensed under the laws of another state or territory if the applicant has met the same requirements as applicants licensed by examination under this chapter. Those applicants who have been licensed in another state or territory by examination other than the examination recognized under this chapter may be considered for licensure by the board if the requirements for a physical therapy license in the state or territory in which the applicant was tested were at least equal to those requirements in force in this state at that time. However, the board may require a written, oral, or practical examination and may require continued study or refresher courses.

History: En. Sec. 5, Ch. 39, L. 1961; amd. Sec. 2, Ch. 227, L. 1974; amd. Sec. 244, Ch. 350, L. 1974; R.C.M. 1947, 66-2505; amd. Sec. 13, Ch. 491, L. 1979; amd. Sec. 25, Ch. 345, L. 1981; amd. Sec. 1, Ch. 454, L. 1983.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-11-308. Annual renewal of license — fee. A licensed physical therapist shall, during January, apply to the department for a renewal of his license and pay a fee which shall be set by board rule. A license that is not renewed before April every year automatically lapses. The board may, in its discretion, revive and renew a lapsed license on the payment of all past unpaid renewal fees or a late renewal fee.

History: En. Sec. 8, Ch. 39, L. 1961; amd. Sec. 1, Ch. 353, L. 1969; amd. Sec. 247, Ch. 350, L. 1974; R.C.M. 1947, 66-2508; amd. Sec. 14, Ch. 491, L. 1979; amd. Sec. 26, Ch. 345, L. 1981.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-11-309. Temporary license. (1) On payment to the department of a fee which shall be set by board rule and the submission of a written application on forms provided by it, the department shall issue, without examination, a temporary license to practice physical therapy in this state for a period not to exceed 1 year to a person who meets the qualifications set forth in 37-11-303, on submission by the person of evidence satisfactory to the board that he is in this state on a temporary basis to assist in a case of medical emergency or to engage in a special physical therapy project.

(2) The board may, upon receipt of an application for examination and upon receipt of a temporary license fee not to exceed $100, issue a temporary license to a person who has applied for a license under this chapter and who is, in the judgment of the board, eligible to take the examination provided for in 37-11-303. This applicant must work under the direction, guidance, and observation of a licensed physical therapist. This temporary license is avail-

able to an applicant only with respect to his first application. The temporary license shall expire when the board makes a final determination on the applicant's examination scores.

(3) The board may require an oral interview of all persons applying for a temporary license.

(4) The board shall adopt necessary and reasonable rules governing the procedures for applying and issuing temporary licenses.

History: En. Sec. 10, Ch. 39, L. 1961; amd. Sec. 248, Ch. 350, L. 1974; R.C.M. 1947, 66-2510; amd. Sec. 15, Ch. 491, L. 1979; amd. Sec. 27, Ch. 345, L. 1981; amd. Sec. 2, Ch. 456, L. 1981.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-11-310. Foreign-trained applicants. The foreign-trained physical therapist applicant's transcripts will be evaluated by a board-approved agency which reviews credentials. Upon receipt of this evaluation the board shall determine whether the number of academic credits awarded meets equivalent educational standards for a physical therapist degree or certificate established by an American physical therapist association accredited school of physical therapy. If the applicant's professional education credit hours are approved by the board, the applicant is eligible for a temporary license prior to examination.

History: En. Sec. 16, Ch. 491, L. 1979; amd. Sec. 2, Ch. 454, L. 1983.

Cross-References

Nondiscrimination in licensing, 49-3-204.

37-11-311. Display of license. Each licensee shall display his original license or an official duplicate issued by the department and a renewal certificate in a conspicuous place in the principal office where he practices physical therapy. A reproduction displayed in lieu of the above is not authorized unless the reproduction is signed and notarized by a notary public.

History: En. Sec. 18, Ch. 491, L. 1979.

37-11-312 through 37-11-319 reserved.

37-11-320. Duty to report violations — immunity from liability. (1) Notwithstanding any provision of state law regarding the confidentiality of health care information, a physical therapist shall report to the board any information that appears to show that another physical therapist is:

(a) mentally or physically unable to engage safely in the practice of physical therapy; or

(b) guilty of any act, omission, or condition that is grounds for disciplinary action under 37-11-321.

(2) There is no liability on the part of and no cause of action may arise against a physical therapist who in good faith provides information to the board as required by subsection (1).

History: En. Sec. 2, Ch. 55, L. 1987.

Cross-References

Licensing investigation and review — record access, 37-1-135.

Health care practitioners — nonliability for peer review, Title 37, ch. 2, part 2.

Pharmacists — nonliability for peer review, 37-7-1101.

37-11-321. Refusal to issue or renew license. The board, after due notice and hearing, may refuse to license any applicant, and may refuse to renew, may suspend, may revoke, or take lesser disciplinary action on the license of any licensed person who:

(1) is habitually intoxicated or is addicted to the use of narcotic drugs;

(2) has been convicted of violating any state or federal narcotic law, subject to chapter 1, part 2, of this title;

(3) is, in the judgment of the board, guilty of immoral or unprofessional conduct as defined by board rule;

(4) has been convicted of any crime involving moral turpitude, subject to chapter 1, part 2, of this title;

(5) is guilty, in the judgment of the board, of gross negligence in his practice as a physical therapist;

(6) has obtained or attempted to obtain licensure by fraud or material misrepresentation;

(7) has been declared to be seriously mentally ill by a court of competent jurisdiction and has not thereafter been released from treatment and declared not to be seriously mentally ill;

(8) has treated or undertaken to treat ailments of human beings otherwise than by physical therapy;

(9) is guilty, in the judgment of the board, of conduct unbecoming a person licensed as a physical therapist or of conduct detrimental to the best interests of the public; or

(10) has practiced physical therapy beyond the scope and limitation of his training and education.

History: En. Sec. 9, Ch. 39, L. 1961; amd. Sec. 25, Ch. 101, L. 1977; R.C.M. 1947, 66-2509; amd. Sec. 17, Ch. 491, L. 1979.

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Duty of Department to investigate unethical conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-11-322. Penalties. Any person who knowingly violates any provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $50 or more than $500 or by imprisonment in the county jail for a term of not less than 30 days or more than 6 months or by both such fine and imprisonment.

History: En. Sec. 16, Ch. 39, L. 1961; R.C.M. 1947, 66-2516.

Cross-References

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

CHAPTER 12

CHIROPRACTIC

Part 1 — General

37-12-101. Definitions — practice of chiropractic.
37-12-102. Exemptions — limitations on construction of chapter.
37-12-103. Duties of chiropractic practitioners.
37-12-104. Rights and limitations governing practice.

Part 2 — Board of Chiropractors

37-12-201. Organization of board — meetings — powers and duties.
37-12-202. Compensation of members — expenses.

Part 3 — Licensing

37-12-301. Unlawful to practice without license.
37-12-302. Applications — qualifications — fees.
37-12-303. Temporary permit.
37-12-304. Examinations — subjects.
37-12-305. Licensing chiropractors from other states without examination.
37-12-306. Repealed.
37-12-307. Annual renewal of license — fees — continuing education — inactive status.
37-12-308. Deposit of fees — accounting.
37-12-309. Municipal license fee prohibited.
37-12-310 through 37-12-320 reserved.
37-12-321. Unprofessional conduct.
37-12-322. Investigation of complaints — discipline of licensees — revocation or suspension of license.
37-12-323. Reconsideration of board action — fee for restoration of license.
37-12-324. Penalty for violation.

Chapter Cross-References

Professional service corporations, Title 35, ch. 4.

Part 1

General

Part Cross-References

Montana Chiropractic Legal Panel Act, Title 27, ch. 12.

Duty of chiropractor to report violation of Montana Elder Abuse Prevention Act, 52-3-811.

37-12-101. Definitions — practice of chiropractic. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of chiropractors provided for in 2-15-1847.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Chiropractic" is the system of specific adjustment or manipulation of the articulations and tissues of the body, particularly of the spinal column, for the correction of nerve interference and includes the use of recognized diagnostic and treatment methods as taught in chiropractic colleges but does not include surgery or the prescription or use of drugs.

History: (1)En. 66-501.1 by Sec. 46, Ch. 350, L. 1974; Sec. 66-501.1, R.C.M. 1947; (2)En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3144, R.C.M. 1921; re-en. Sec. 3144, R.C.M. 1935; amd. Sec. 1, Ch. 579, L. 1977; Sec. 66-507, R.C.M. 1947; R.C.M. 1947, 66-501.1, 66-507(1); amd. Sec. 3, Ch. 274, L. 1981.

37-12-102. Exemptions — limitations on construction of chapter. Nothing in this chapter shall be construed to restrain or restrict any legally licensed physician or surgeon or any legally licensed osteopath in the practice of his profession. The practice of chiropractic as herein defined is hereby declared not to be the practice of medicine or surgery within the meaning of the laws of the state of Montana defining the same and is further declared not to be the practice of osteopathy within the meaning of the laws of the state of Montana defining the same. Duly licensed chiropractors shall not be subject to the provisions of chapter 5 of this title or liable to any prosecution thereunder.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3154, R.C.M. 1921; re-en. Sec. 3154, R.C.M. 1935; R.C.M. 1947, 66-517.

Cross-References

Practice of medicine defined, 37-3-102.

Exemption from physician's licensing requirements, 37-3-103.

Practice of osteopathy defined, 37-5-101.

37-12-103. Duties of chiropractic practitioners. Chiropractic practitioners shall observe and be subject to all state and municipal regulations relating to the control of contagious and infectious diseases, sign death and birth certificates, and as to any and all matters pertaining to public health, report to the proper health officers the same as other practitioners.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3145, R.C.M. 1921; re-en. Sec. 3145, R.C.M. 1935; R.C.M. 1947, 66-508.

Cross-References

Reporting required by health care professionals, Title 37, ch. 2, part 3.

Duty of chiropractors to report child abuse, 41-3-201.

37-12-104. Rights and limitations governing practice. (1) Chiropractors licensed under this chapter shall have the right to practice that science defined as chiropractic under 37-12-101 in accordance with the method, thought, and practice of chiropractors, and they shall be permitted to use the prefix "Dr." or "Doctor" as a title but shall not in any way imply that they are medical doctors, osteopaths, or surgeons. They shall not prescribe for or administer to any person any medicine or drugs or practice medicine or surgery or osteopathy, except that the use of antiseptics for purposes of sanitation and hygiene and to prevent infection and contagion shall be permitted.

(2) Licensed chiropractors may diagnose, palpate, and treat the human body by the application of manipulative, manual, mechanical, and dietetic methods, including chiropractic physiotherapy, the use of supportive appliances, analytical instruments, and diagnostic x-ray in accordance with guidelines promulgated or approved by state or federal health regulatory agencies.

History: (1)En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3146, R.C.M. 1921; re-en. Sec. 3146, R.C.M. 1935; Sec. 66-509, R.C.M. 1947; (2)En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3144, R.C.M. 1921; re-en. Sec. 3144, R.C.M. 1935; amd. Sec.

1, Ch. 579, L. 1977; Sec. 66-507, R.C.M. 1947; R.C.M. 1947, 66-507(2), 66-509; amd. Sec. 1, Ch. 203, L. 1989.

Part 2

Board of Chiropractors

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1847.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-12-201. Organization of board — meetings — powers and duties. (1) The board shall elect annually a president, vice president, and secretary-treasurer from its membership.

(2) The board shall hold a regular meeting each year at Helena and shall hold special meetings at times and places as a majority of the board designates. A majority of the board constitutes a quorum.

(3) The board shall:

(a) administer oaths, take affidavits, summon witnesses, and take testimony as to matters coming within the scope of the board;

(b) adopt a seal that must be affixed to licenses issued;

(c) make a schedule of minimum educational requirements, which are without prejudice, partiality, or discrimination, as to the different schools of chiropractic;

(d) adopt rules necessary for the implementation, administration, continuation, and enforcement of this chapter. The rules must address but are not limited to license applications, form and display of license, license examination format, criteria for and grading of examinations, disciplinary standards for licensees, and the registration of interns and preceptors;

(e) investigate complaints;

(f) make determinations of the qualifications of applicants under this chapter;

(g) administer the examination for licensure under this chapter;

(h) establish and collect fees, fines, and charges as provided in this chapter;

(i) issue, suspend, or revoke licenses under the conditions prescribed in this chapter; and

(j) certify that a chiropractor who meets the standards that the board by rule adopts is a qualified evaluator for purposes of 39-71-711.

(4) The department shall keep a record of the proceedings of the board, which shall at all times be open to public inspection.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3140, R.C.M. 1921; re-en. Sec. 3140, R.C.M. 1935; amd. Sec. 47, Ch. 350, L. 1974; amd. Sec. 1, Ch. 432, L. 1977; R.C.M. 1947, 66-503; amd. Sec. 1, Ch. 321, L. 1987; amd. Sec. 1, Ch. 161, L. 1989; amd. Sec. 2, Ch. 203, L. 1989; amd. Sec. 1, Ch. 275, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 275 in (3)(d), at end, inserted "and the registration of interns and preceptors"; and made minor changes in style. Amendment effective April 7, 1993.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Oath defined, 1-1-201.

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Proof of execution, Title 1, ch. 5, part 3.

Power of notary to take acknowledgments, 1-5-416.
Oaths, Title 1, ch. 6.
Open meetings, Title 2, ch. 3, part 2.
Meeting defined, 2-3-202.
Power of agencies to issue subpoenas, 2-4-104.
Adoption and publication of rules, Title 2, ch. 4, part 3.
Public records, Title 2, ch. 6.
Allocation for administrative purposes only, 2-15-121.
Quasi-judicial boards, 2-15-124.
Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.
Affidavits, Title 26, ch. 1, part 10.
Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.
Duties of Department, 37-1-101.
Duties of boards, 37-1-131.
Perjury and other falsification in official matters, Title 45, ch. 7, part 2.
Disrupting meeting as disorderly conduct, 45-8-101.
Nondiscrimination in licensing, 49-3-204.

37-12-202. Compensation of members — expenses. The members of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3150, R.C.M. 1921; re-en. Sec. 3150, R.C.M. 1935; amd. Sec. 4, Ch. 188, L. 1961; amd. Sec. 142, Ch. 147, L. 1963; amd. Sec. 20, Ch. 93, L. 1969; amd. sec. 54, Ch. 350, L. 1974; amd. Sec. 26, Ch. 439, L. 1975; R.C.M. 1947, 66-513(3); amd. Sec. 17, Ch. 474, L. 1981.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.
Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Nondiscrimination in licensing, 49-3-204.

37-12-301. Unlawful to practice without license. It is unlawful for a person to practice chiropractic in this state without first obtaining a license under this chapter.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3141, R.C.M. 1921; re-en. Sec. 3141, R.C.M. 1935; amd. Sec. 48, Ch. 350, L. 1974; amd. Sec. 2, Ch. 432, L. 1977; R.C.M. 1947, 66-504(1).

37-12-302. Applications — qualifications — fees. (1) A person wishing to practice chiropractic in this state shall make application to the department, on the form and in the manner prescribed by the board, at least 21 days prior to a meeting of the board. Each applicant shall be a graduate of or expect to graduate within 90 days prior to the next licensing examination administered by the board from a college of chiropractic approved by the board, in which he has attended a course of study of 4 school years of not less than 9 months each, and shall present evidence showing completion of 2 full academic years of college or university work from an institution acceptable to the board of regents of higher education. Application shall be made in writing and shall be sworn to by an officer authorized to administer oaths and shall recite the history of applicant's educational qualifications, how long he has studied chiropractic, of what school or college he is a graduate, and the length of time he has been engaged in practice. The application shall be accompanied with proofs by diplomas, certificates, etc., and satisfactory evidence of good character and reputation.

(2) There shall be paid to the department by an applicant for a license a fee prescribed by the board. Like fees shall be paid for a subsequent examination and application.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; amd. Sec. 1, Ch. 224, L. 1919; re-en. Sec. 3142, R.C.M. 1921; amd. Sec. 1, Ch. 129, L. 1933; re-en. Sec. 3142, R.C.M. 1935; amd. Sec. 1, Ch. 123, L. 1951; amd. Sec. 1, Ch. 178, L. 1955; amd. Sec. 1, Ch. 188, L. 1961; amd. Sec. 49, Ch. 350, L. 1974; amd. Sec. 3, Ch. 432, L. 1977; R.C.M. 1947, 66-505; amd. Sec. 28, Ch. 345, L. 1981; amd. Sec. 3, Ch. 203, L. 1989.

Cross-References

Oath defined, 1-1-201.

Proof of execution, Title 1, ch. 5, part 3.

Power of notary to take acknowledgments, 1-5-416.

Oath, Title 1, ch. 6.

Affidavits, Title 26, ch. 1, part 10.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Perjury, 45-7-201.

False swearing, 45-7-202.

37-12-303. Temporary permit. When application for examination for license is filed with the department under 37-12-302, the board may authorize the department to issue a temporary permit to practice.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3141, R.C.M. 1921; re-en. Sec. 3141, R.C.M. 1935; amd. Sec. 48, Ch. 350, L. 1974; amd. Sec. 2, Ch. 432, L. 1977; R.C.M. 1947, 66-504(2).

37-12-304. Examinations — subjects. (1) Examinations for a license to practice chiropractic must be made by the department, subject to 37-1-101, according to the method considered by the board to be the most practicable and expeditious to test the applicant's qualifications. The application must be designated by a number instead of the applicant's name so that the identity will not be discovered or disclosed until after the examination papers are graded.

(2) Examinations must be administered on subjects taught in chiropractic colleges, on the provisions of this chapter, and on other provisions of the Montana Code Annotated pertaining to the practice of chiropractic. A license must be granted to applicants who correctly answer 75% of all questions asked, including x-ray questions. If an applicant fails to answer correctly 60% of the questions on any branch of the examination, the applicant is not entitled to a license.

(3) The board may accept the grades an applicant has received in the examinations given by the national board of chiropractic examiners and may authorize the department to issue a license without further examination to an applicant who holds a valid certificate from the national board of chiropractic examiners if the applicant meets the other requirements of this chapter. The board may require an applicant to satisfactorily pass a clinical proficiency examination before being issued a license, even though the applicant holds a valid certificate from the national board of chiropractic examiners.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3143, R.C.M. 1921; re-en. Sec. 3143, R.C.M. 1935; amd. Sec. 1, Ch. 36, L. 1967; amd. Sec. 50, Ch. 350, L. 1974; amd. Sec. 4, Ch. 432, L. 1977; R.C.M. 1947, 66-506; amd. Sec. 1, Ch. 347, L. 1983; amd. Sec. 2, Ch. 275, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 275 in (2), near beginning, substituted "administered" for "made in writing" and after "colleges" substituted "on the provisions of this chapter, and on other provisions of the Montana Code Annotated pertaining to the practice of chiropractic" for "including the use of x-ray equipment and radiographs. Additional subjects may be prescribed by the board to meet new conditions"; and made minor changes in style. Amendment effective April 7, 1993.

37-12-305. Licensing chiropractors from other states without examination. Persons licensed to practice chiropractic under the laws of any other state having chiropractic educational requirements equal to this chapter may, in the discretion of the board, be issued a license to practice in this state without examination upon payment of the fee prescribed by the board as herein provided.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3152, R.C.M. 1921; re-en. Sec. 3152, R.C.M. 1935; amd. Sec. 5, Ch. 188, L. 1961; R.C.M. 1947, 66-515; amd. Sec. 29, Ch. 345, L. 1981.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-12-306. Repealed. Sec. 4, Ch. 66, L. 1981.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3148, R.C.M. 1921; re-en. Sec. 3148, R.C.M. 1935; amd. Sec. 52, Ch. 350, L. 1974; R.C.M. 1947, 66-511.

37-12-307. Annual renewal of license — fees — continuing education — inactive status. (1) A license expires on September 1 of each year and shall be renewed by the department on payment of a renewal fee, as set by the board, and the presentation of evidence satisfactory to the board that the licensee, in the year preceding the application for renewal, attended and successfully completed a postgraduate educational program for chiropractors approved by the board. All applicants for renewal who have not paid the renewal fee prior to October 1 of each year shall pay an additional late fee prescribed by the board.

(2) The board shall by rule set standards for inactive status. It shall charge an annual fee for a license placed on inactive status.

(3) An inactive license may be reinstated to active status upon payment of a fee and completion of the continuing education requirements set by the board.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; amd. Sec. 1, Ch. 90, L. 1921; re-en. Sec. 3149, R.C.M. 1921; amd. Sec. 2, Ch. 129, L. 1933; re-en. Sec. 3149, R.C.M. 1935; amd. Sec. 2, Ch. 123, L. 1951; amd. Sec. 3, Ch. 188, L. 1961; amd. Sec. 1, Ch. 8, L. 1965; amd. Sec. 53, Ch. 350, L. 1974; amd. Sec. 1, Ch. 516, L. 1977; R.C.M. 1947, 66-512(1); amd. Sec. 4, Ch. 155, L. 1981; amd. Sec. 30, Ch. 345, L. 1981; amd. Sec. 1, Ch. 344, L. 1983; amd. Sec. 2, Ch. 321, L. 1987.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-12-308. Deposit of fees — accounting. (1) Fees collected by the department under this chapter shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

(2) The department shall keep an accurate account of funds received and vouchers issued by the department.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3150, R.C.M. 1921; re-en. Sec. 3150, R.C.M. 1935; amd. Sec. 4, Ch. 188, L. 1961; amd. Sec. 142, Ch. 147, L. 1963; amd. Sec. 20, Ch. 93, L. 1969; amd. sec. 54, Ch. 350, L. 1974; amd. Sec. 26, Ch. 439, L. 1975; R.C.M. 1947, 66-513(1), (2); amd. Sec. 1, Ch. 277, L. 1983.

37-12-309. Municipal license fee prohibited. No license fee or license tax may be imposed upon doctors of chiropractic as a condition to the practice of their profession by a municipality or any other political subdivision of the state, including a local government with self-governing powers.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; amd. Sec. 1, Ch. 90, L. 1921; re-en. Sec. 3149, R.C.M. 1921; amd. Sec. 2, Ch. 129, L. 1933; re-en. Sec. 3149, R.C.M. 1935; amd. Sec. 2, Ch. 123, L. 1951; amd. Sec. 3, Ch. 188, L. 1961; amd. Sec. 1, Ch. 8, L. 1965; amd. Sec. 53, Ch. 350, L. 1974; amd. Sec. 1, Ch. 516, L. 1977; R.C.M. 1947, 66-512(2); amd. Sec. 3, Ch. 321, L. 1987.

37-12-310 through 37-12-320 reserved.

37-12-321. Unprofessional conduct. As used in this chapter, "unprofessional conduct" means:

(1) resorting to fraud, misrepresentation, or deception in applying for or securing a license or in taking the examination provided for in this chapter;

(2) obtaining any form of compensation, directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition can be cured;

(3) practicing chiropractic under a false or assumed name or impersonating another practitioner of like or different name;

(4) knowingly disobeying a rule of the board;

(5) conviction of a criminal offense involving moral turpitude. A certified copy of the judgment of conviction is conclusive evidence of the conviction. This subsection is subject to chapter 1, part 2, of this title.

(6) habitual intemperance or excessive use of narcotic drugs, alcohol, or any other substance to the extent that such use impairs the user's physical or mental professional capability;

(7) administering, dispensing, or prescribing a narcotic or hallucinatory drug, as defined by the federal food and drug administration or successors;

(8) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution, or organization, including fraud, misrepresentation, or deception with regard to a claim for benefits under Title 39, chapter 71 or 72;

(9) testifying in court on a contingency basis;

(10) conspiring to misrepresent or knowingly misrepresenting physical conditions in order to increase or decrease a settlement or award;

(11) aiding or abetting in the practice of chiropractic a person not licensed to practice chiropractic or a person whose license is suspended;

(12) practicing chiropractic as the partner, agent, or employee of or in joint venture with a person not licensed to practice chiropractic in this state. However, this does not prohibit incorporation as a professional service corporation under Title 35, chapter 4, or prevent a single consultation with or a single treatment by a person licensed to practice chiropractic in another state or territory of the United States or a foreign country.

(13) violating, attempting or conspiring to violate, or aiding or abetting in the violation of this chapter or the rules adopted under it; or

(14) conduct unbecoming a person licensed to practice chiropractic or detrimental to the best interests of the public.

History: En. 66-510.1 by Sec. 2, Ch. 516, L. 1977; R.C.M. 1947, 66-510.1; amd. Sec. 14, Ch. 619, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 619 in (8), at end after "organization", inserted "including fraud, misrepresentation, or deception with regard to a claim for benefits under Title 39, chapter 71 or 72". Amendment effective July 1, 1993.

Cross-References

Montana Chiropractic Legal Panel — what claims subject to review, 27-12-105.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unethical conduct, 37-1-101.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-12-322. Investigation of complaints — discipline of licensees — revocation or suspension of license. (1) The board may make an investigation whenever it is brought to its attention that there is reason to suspect that a person licensed to practice chiropractic:

(a) has a mental or physical condition such that he is unable to safely engage in the practice of chiropractic;

(b) has been declared incompetent or seriously mentally ill by a court of competent jurisdiction and thereafter has not been declared competent or released from supervision;

(c) has procured his license through mistake;

(d) has been guilty of unprofessional conduct;

(e) has practiced chiropractic while his license was suspended or revoked;

(f) has while under probation violated its terms.

(2) The investigation shall be for the purpose of determining the probability of the existence of these conditions or the commission of these offenses and may include requiring the person to submit to a physical or mental examination, or both, by a physician or physicians selected by the board if it appears to be in the best interests of the public that this evaluation be secured. The board may examine the hospital records and reports of the licensee as part of the examination, and copies of these shall be released to the board on written request. If the board has reasonable cause to believe that this probability exists, the department shall mail to the person at his last address of record with the department, a specification of the charges against him, together with a written notice of the time and place of the hearing on such charges, advising him that he may be present in person and with counsel if he so desires to offer evidence and be heard in his defense. The time fixed for hearing may not be less than 30 days from the date of mailing the notice.

(3) Any person, including a member of the board, may file a sworn complaint with the department against a licensed chiropractor charging him with any of the offenses or conditions set forth in 37-12-321 or subsection (1) of this section, which complaint shall set forth a specification of the charges. When the complaint has been filed, the board may make an investigation as provided by this section or may proceed to hearing. The department shall mail

a copy of the complaint to the person charged, together with notice of hearing as provided in subsection (2) of this section.

(4) After the hearing, the board shall adopt a resolution finding that the offenses charged have or have not been committed or that the conditions charged do or do not exist. If the finding is in the negative, the board shall dismiss the charges. If the finding is in the affirmative, the board shall:

(a) revoke the license;

(b) suspend the licensee's right to practice for a period not to exceed 1 year;

(c) suspend its judgment of revocation on terms and conditions determined by the board;

(d) place the licensee on probation;

(e) fine the licensee in an amount not to exceed $500 for each incident; or

(f) take any other disciplinary action which the board in its discretion considers proper.

(5) In cases of revocation, suspension, or probation, the department shall record the facts of the case and all actions of the board in relation thereto.

(6) On the expiration of a term of suspension, the licensee shall be reinstated by the board if he furnishes evidence, satisfactory to the board, that he is then of good moral character and conduct or restored to good health and that he has not practiced chiropractic during the term of suspension. If the evidence fails to establish such facts to the satisfaction of the board, the board shall proceed to hearing on revocation with notice as provided in subsection (2) of this section.

(7) Following a final determination resulting in any disciplinary action taken by the board under subsection (4), the board may recover from the disciplined party all reasonable costs of any proceeding, not to exceed $1,000, incurred for the purpose of the disciplinary action. Fines and costs recovered must be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. 66-510.2 by Sec. 3, Ch. 516, L. 1977; R.C.M. 1947, 66-510.2; amd. Sec. 4, Ch. 203, L. 1989.

Cross-References

Oath defined, 1-1-201.

Proof of execution, Title 1, ch. 5, part 3.

Power of notary to take acknowledgments, 1-5-416.

Oaths, Title 1, ch. 6.

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Affidavits, Title 26, ch. 1, part 10.

Duty of Department to investigate unethical practices, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Perjury, 45-7-201.

False swearing, 45-7-202.

37-12-323. Reconsideration of board action — fee for restoration of license. (1) At any time after refusal, suspension, or revocation of license or placement on probation or any other disciplinary action, the board may, on its own motion or on application, reconsider its prior action and reverse, rescind, or modify such action.

(2) A person whose license has been revoked and later restored shall pay a fee prescribed by the board for the restoration.

History: En. 66-510.3 by Sec. 4, Ch. 516, L. 1977; R.C.M. 1947, 66-510.3; amd. Sec. 31, Ch. 345, L. 1981.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-12-324. Penalty for violation. Any person who shall practice or attempt to practice chiropractic or any person who shall buy, sell, or fraudulently obtain any diploma or license to practice chiropractic, whether recorded or not, or who shall use the title "chiropractor", "D.C.", "Ph.C.", or any word title to influence belief that he is engaged in the practice of chiropractic without first complying with the provisions of this chapter or any person who shall violate any of the provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $100 or more than $700 or by imprisonment in a county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment. Prosecutions for the violation of this chapter shall be instituted in the district courts.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3153, R.C.M. 1921; re-en. Sec. 3153, R.C.M. 1935; amd. Sec. 1, Ch. 74, L. 1943; R.C.M. 1947, 66-516.

CHAPTER 13

ACUPUNCTURE PRACTICE ACT

Part 1 — General

37-13-101. Citation of chapter.
37-13-102. Legislative finding and purpose.
37-13-103. Definitions.
37-13-104. Partial exemptions.

Part 2 — Board of Medical Examiners

37-13-201. Powers and duties.

Part 3 — Licensing

37-13-301. License required for practice.
37-13-302. Application for licensure — fee — qualifications.
37-13-303. Repealed.
37-13-304. Issuance of certificate of license — license fee.
37-13-305. Admission of licensees from other states.
37-13-306. Annual renewal — fee — military exemption.
37-13-307. Deposit of moneys received.
37-13-308 through 37-13-310 reserved.
37-13-311. Denial, suspension, or revocation of license — grounds.
37-13-312. Denial, suspension, or revocation of license — procedure.
37-13-313. Reinstatement after period of suspension.
37-13-314. Application of administrative procedures.
37-13-315. Enjoining unlawful practice.
37-13-316. Penalty.

Part 1
General

37-13-101. Citation of chapter. This chapter shall be known and may be cited as the "Acupuncture Practice Act of 1974".

History: En. 66-3401 by Sec. 1, Ch. 317, L. 1974; R.C.M. 1947, 66-3401.

37-13-102. Legislative finding and purpose. The legislature finds and declares that the practice of acupuncture in Montana affects the public health, safety, and welfare and should therefore be subject to regulation and control in the public interest in order to protect the public from the unauthorized and unqualified practice of acupuncture and from unprofessional conduct by persons licensed to practice acupuncture.

History: En. 66-3402 by Sec. 2, Ch. 317, L. 1974; R.C.M. 1947, 66-3402.

37-13-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Acupuncture" means the treatment of the human body by means of mechanical, thermal, or electrical stimulation effected by the insertion of solid needles.

(2) "Acupuncturist" means a natural person licensed by the board of medical examiners to practice acupuncture.

(3) "Board" means the Montana state board of medical examiners.

(4) "School of acupuncture" means a school where acupuncture is taught that has been recognized and designated by the board of medical examiners.

History: En. 66-3403 by Sec. 3, Ch. 317, L. 1974; R.C.M. 1947, 66-3403.

37-13-104. Partial exemptions. Nothing in this chapter shall be construed to require doctors of medicine, osteopathy, chiropractic, dentistry, and podiatry who are licensed in Montana to take further examinations in anatomy, physiology, chemistry, dermatology, diagnosis, bacteriology, materia medica, or other subjects which are or may be required for licensure in their respective professions; but no doctor of medicine, osteopathy, chiropractic, dentistry, or podiatry shall practice acupuncture in this state unless and until he has completed a course and passed an examination in acupuncture as required by this chapter.

History: En. 66-3415 by Sec. 15, Ch. 317, L. 1974; R.C.M. 1947, 66-3415.

Part 2
Board of Medical Examiners

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1841.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-13-201. Powers and duties. In addition to all other powers and duties conferred and imposed upon the board by this chapter, the board shall have and exercise the following powers and duties:

(1) to promulgate, under the applicable provisions of the Montana Administrative Procedure Act, rules which it determines to be necessary to carry out the provisions of this chapter;

(2) to adopt a schedule of minimum educational requirements, not inconsistent with the provisions of this chapter;

(3) to prescribe forms for application for examination and license;

(4) to prepare and supervise examination of applicants for license to practice acupuncture;

(5) to obtain the services of professional examination agencies in lieu of its own preparation of the examinations;

(6) to issue, revoke, and suspend licenses as hereinafter provided;

(7) to hold hearings, issue subpoenas, administer oaths, and take testimony and proofs concerning all matters within its jurisdiction;

(8) to issue commissions to take depositions of witnesses who are sick or absent from the state; and

(9) to adopt a seal, which shall be affixed to all licenses issued by the board and other official papers.

History: En. 66-3405 by Sec. 5, Ch. 317, L. 1974; R.C.M. 1947, 66-3405.

Cross-References

Oath defined, 1-1-201.

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Proof of execution, Title 1, ch. 5, part 3.

Power of notary to take acknowledgments, 1-5-416.

Oaths, Title 1, ch. 6.

Power of agencies to issue subpoenas, 2-4-104.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation for administrative purposes only, 2-15-121.

Quasi-judicial boards, 2-15-124.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

Affidavits, Title 26, ch. 1, part 10.

Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.

Duties of boards, 37-1-131.

Perjury, 45-7-201.

False swearing, 45-7-202.

Part 3
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-13-301. License required for practice. No person may engage in the practice of acupuncture in this state unless he is licensed under the provisions of this chapter.

History: En. 66-3404, by Sec. 4, Ch. 317, L. 1974; R.C.M. 1947, 66-3404.

37-13-302. Application for licensure — fee — qualifications. (1) Each person desiring to practice acupuncture in this state shall make application for licensure with the secretary of the board, upon the forms and in the manner prescribed by the board. A fee prescribed by the board shall accompany the application.

(2) A person making application shall furnish the board evidence that he is:

(a) at least 18 years of age;

(b) of good moral character, as determined by the board;

(c) a graduate of an approved school of acupuncture that is approved by the national accreditation commission for schools and colleges of acupuncture and oriental medicine and offers a course of at least 1,000 hours of entry-level training in recognized branches of acupuncture or an equivalent curriculum approved by the board; and

(d) has passed an examination prepared and administered by the board or an examination prepared and administered by the national commission for the certification of acupuncturists.

History: En. 66-3406 by Sec. 6, Ch. 317, L. 1974; R.C.M. 1947, 66-3406; amd. Sec. 4, Ch. 341, L. 1981; amd. Sec. 32, Ch. 345, L. 1981; amd. Sec. 1, Ch. 307, L. 1987; amd. Sec. 1, Ch. 327, L. 1989.

Cross-References

Standardized forms, 37-1-104.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

37-13-303. Repealed. Sec. 2, Ch. 307, L. 1987.

History: En. 66-3407 by Sec. 7, Ch. 317, L. 1974; R.C.M. 1947, 66-3407; amd. Sec. 33, Ch. 345, L. 1981.

37-13-304. Issuance of certificate of license — license fee. All applicants successfully passing the examination required by this chapter shall be registered as licensed acupuncturists in the board register and, upon the payment of a license fee prescribed by the board, shall be issued a certificate of license in such form as prescribed by the board. The certificate shall bear the official seal of the board.

History: En. 66-3408 by Sec. 8, Ch. 317, L. 1974; R.C.M. 1947, 66-3408; amd. Sec. 34, Ch. 345, L. 1981.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-13-305. Admission of licensees from other states. A license without examination may be issued by the board to any acupuncturist licensed or certified in another state where the licensing or certification requirements are substantially equivalent to the requirements of this chapter, upon payment of the license fee prescribed by the board as herein provided.

History: En. 66-3409 by Sec. 9, Ch. 317, L. 1974; R.C.M. 1947, 66-3409; amd. Sec. 35, Ch. 345, L. 1981.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-13-306. Annual renewal — fee — military exemption. (1) The license to practice acupuncture must be renewed annually, on a date set by the board, without examination and upon request of the licensee. The request for renewal must be on forms prescribed by the board and accompanied by a renewal fee prescribed by the board. The request and fee must be in the hands of the secretary of the board not later than the expiration date of the license.

(2) Immediately following the renewal date, the secretary shall notify all licensees from whom requests for renewal, accompanied by the renewal fee, have not been received that their licenses have expired and that they will be cancelled and revoked upon the records of the board unless a request for

renewal and reinstatement, accompanied by the renewal fee and an additional fee prescribed by the board, is in the hands of the secretary within 30 days of the renewal date.

(3) If the licensee fails to renew within 30 days following the renewal date, the secretary of the board shall cancel and revoke upon its records all licenses that have not been renewed or reinstated as provided by this chapter and shall notify the licensees whose licenses are revoked of the action.

(4) A licensee who allows his license to lapse by failing to renew or reinstate the license as provided in this section may subsequently reinstate the license upon good cause shown to the satisfaction of the board and upon payment of all annual renewal fees then accrued plus an additional fee prescribed by the board for each year following the cancelling of the license.

(5) A person actively engaged in the military service of the United States and licensed to practice acupuncture as provided in this part is not required to pay the annual renewal fee or make application for renewal until the renewal date of the calendar year in which he returns from military service to civilian or inactive status.

History: En. 66-3410 by Sec. 10, Ch. 317, L. 1974; R.C.M. 1947, 66-3410; amd. Sec. 36, Ch. 345, L. 1981; amd. Sec. 4, Ch. 540, L. 1991.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-13-307. Deposit of moneys received. All moneys received under this chapter shall be deposited with the state treasurer and credited to an account to be designated by him. No money shall be paid out of the fund except upon vouchers drawn against the fund, signed and certified to by the secretary of the board. All funds so credited shall be available to the board for the payment of expenses incurred by it in the performance of its duties under this chapter.

History: En. 66-3413 by Sec. 13, Ch. 317, L. 1974; R.C.M. 1947, 66-3413.

37-13-308 through 37-13-310 reserved.

37-13-311. Denial, suspension, or revocation of license — grounds. The board may refuse to issue or may suspend or revoke a license issued pursuant to this chapter for any one or any combination of the following causes:

(1) conviction of a felony or conviction of a violation of any state or federal law regulating the possession, distribution, or use of any controlled substance as shown by a certified copy of record of the court, subject to chapter 1, part 2 of this title;

(2) being adjudicated incompetent or seriously mentally ill;

(3) sustaining a physical or mental disability which renders further practice dangerous;

(4) habitual drunkenness or habitual addiction to the use of a controlled substance;

(5) gross malpractice;

(6) engaging in any dishonorable, unethical, or unprofessional conduct which may deceive, defraud, or harm the public or which is unbecoming a person licensed to practice under this chapter;

(7) obtaining or any attempt to obtain a license or practice in the profession for money or any other thing of value by fraudulent misrepresentations;

(8) advertising by means of knowingly false or deceptive statement;

(9) advertising, practicing, or attempting to practice under a name other than one's own;

(10) using any false, fraudulent, or forged statement or document or engaging in any fraudulent, deceitful, dishonest, or immoral practice in connection with the licensing requirements of this chapter; or

(11) violating or attempting to violate or assisting or abetting the violation of or conspiring to violate any provision of this chapter.

History: En. 66-3411 by Sec. 11, Ch. 317, L. 1974; amd. Sec. 30, Ch. 101, L. 1977; R.C.M. 1947, 66-3411(1).

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unethical conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-13-312. Denial, suspension, or revocation of license — procedure. (1) Any person, including any member of the board, may file a sworn complaint with the secretary of the board against any person having a license to practice acupuncture in this state charging him with the commission of any of the offenses set forth in 37-13-311, which complaint shall set forth a specification of the charges. When the complaint is filed, the secretary shall mail a copy to the person so accused at his last address of record with the board, together with a written notice of the time and place of a hearing thereon, advising him that he may be present in person and by counsel if he so desires to offer evidence and be heard in his defense. The time fixed for hearing may not be less than 30 days from the date of mailing the notice.

(2) At the time and place fixed for a hearing before the board as provided in subsection (1) of this section or at any time and place to which the matter may be continued, the board shall receive evidence upon the subject under consideration and shall accord the person against whom charges are preferred a full and fair opportunity to be heard in his defense and shall, after consideration, adopt a resolution finding him guilty or not guilty of the matters charged. If the board finds that the conditions referred to in 37-13-311 do not exist with reference to the person or if he is found not guilty, the board shall dismiss the charges or complaint, but if the board finds that the conditions referred to in 37-13-311 do exist and the person is found guilty, the board shall:

(a) revoke his license;

(b) suspend his right to practice for a period not exceeding 1 year;

(c) suspend its judgment of revocation upon the terms and conditions to be determined by the board;

(d) place him on probation; or

(e) take such other action in relation to disciplining him as the board in its discretion considers proper.

(3) The secretary of the board in all cases of revocation, suspension, or probation shall enter in its records the facts of the action and of any subsequent action of the board with respect thereto.

History: En. 66-3411 by Sec. 11, Ch. 317, L. 1974; amd. Sec. 30, Ch. 101, L. 1977; R.C.M. 1947, 66-3411(part).

Cross-References

Oath defined, 1-1-201.

Oaths, Title 1, ch. 6.

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Affidavits, Title 26, ch. 1, part 10.

Disciplinary authority of boards — injunctions, 37-1-136.

Perjury, 45-7-201.

False swearing, 45-7-202.

37-13-313. Reinstatement after period of suspension. Upon the expiration of the term of suspension, the licensee shall be reinstated by the board provided the licensee furnishes the board with evidence that he is then of good moral character and conduct and restored to good health and that he has not practiced acupuncture in this state during the term of suspension. If the evidence fails to establish to the satisfaction of the board that the licensee is then of good moral character and conduct or restored to good health or if the evidence shows he has practiced acupuncture in this state during the term of suspension, the board shall revoke the license at a hearing, the notice and procedure of which shall be as herein provided, which revocation is final and absolute.

History: En. 66-3411 by Sec. 11, Ch. 317, L. 1974; amd. Sec. 30, Ch. 101, L. 1977; R.C.M. 1947, 66-3411(5).

Cross-References

Judicial review of contested cases, Title 2, ch. 4, part 7.

37-13-314. Application of administrative procedures. (1) The contested case procedures of the Montana Administrative Procedure Act apply to the notice and hearing required by 37-13-312 and 37-13-313, except that neither common law nor statutory rules of evidence need apply, but the board may make rules designed to exclude repetitive, redundant, or irrelevant testimony.

(2) Any person aggrieved by the final decision of the board may obtain judicial review of that decision. The judicial review procedure shall be the same as that for contested cases under the Montana Administrative Procedure Act.

History: (1)En. 66-3411 by Sec. 11, Ch. 317, L. 1974; amd. Sec. 30, Ch. 101, L. 1977; Sec. 66-3411, R.C.M. 1947; (2)En. 66-3412 by Sec. 12, Ch. 317, L. 1974; Sec. 66-3412, R.C.M. 1947; R.C.M. 1947, 66-3411(part), 66-3412.

Cross-References

Contested case procedures, Title 2, ch. 4, part 6.

37-13-315. Enjoining unlawful practice. The practice of acupuncture in any way other than as defined in this chapter may be enjoined by the district court on petition by the board. In any such proceeding, it shall not be necessary to show that any person is individually injured by the actions complained of. If the respondent is found to have so practiced, the court shall enjoin him from so practicing unless and until he has been duly licensed. Procedure in such cases shall be the same as in any other injunction suit. The remedy by injunction is in addition to criminal prosecution and punishment.

History: En. 66-3414 by Sec. 14, Ch. 317, L. 1974; R.C.M. 1947, 66-3414.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Disciplinary authority of boards — injunctions, 37-1-136.

37-13-316. Penalty. Any person who violates any of the provisions of this chapter or the rules of the state board of acupuncture shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding 6 months or by a fine not exceeding $500, or both.

History: En. 66-3416 by Sec. 16, Ch. 317, L. 1974; R.C.M. 1947, 66-3416.

Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

CHAPTER 14

RADIOLOGIC TECHNOLOGISTS

Part 1 — General

37-14-101. Purpose.
37-14-102. Definitions.

Part 2 — Board of Radiologic Technologists

37-14-201. Compensation of board members — meetings — quorum.
37-14-202. Rulemaking power.

Part 3 — Licensing

37-14-301. Limitation of license authority — exemptions.
37-14-302. Qualifications.
37-14-303. Examination — application fee.
37-14-304. Licensure by endorsement.
37-14-305. Issuance of license or permit — fee.
37-14-306. Permits.
37-14-307. Duty to carry, display license or permit.
37-14-308. Issuance of other documents.
37-14-309. Replacement documents.
37-14-310. Annual renewal — fee — reissuance of license.
37-14-311. Deposit of fees.
37-14-312. Repealed.
37-14-313 through 37-14-320 reserved.
37-14-321. Revocation or suspension of license or permit.
37-14-322. Inspections.
37-14-323. Penalty for violation.

Chapter Cross-References

Nuclear regulation, Title 75, ch. 3.

Part 1

General

37-14-101. Purpose. The legislature declares that the practice of radiologic technology affects the public health, safety, and welfare and that it is therefore necessary to regulate and control such practice in the public interest. The purpose of this chapter is to protect the public from the unprofessional, improper, unauthorized, or unqualified practice of radiologic technology.

History: En. 66-3701.1 by Sec. 4, Ch. 310, L. 1977; R.C.M. 1947, 66-3701.1.

37-14-102. Definitions. In this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Board" means the board of radiologic technologists provided for in 2-15-1848.

(2) "Department" means the department of commerce.

(3) "License" means an authorization issued by the department to perform x-ray procedures on persons.

(4) "Licensed practitioner" means a person licensed or otherwise authorized by law to practice medicine, dentistry, denturitry, dental hygiene, podiatry, osteopathy, or chiropractic.

(5) "Limited permit technician" means a person who does not qualify for the issuance of a license under the provisions of this chapter but who has demonstrated, to the satisfaction of the board, the capability of performing specified high-quality x-ray procedures without endangering public health and safety.

(6) "Performance of x-ray procedures" means the involvement or completion of any portion of an x-ray procedure that may have an effect on the patient's accumulated x-ray radiation exposure, including positioning of the patient, technique selection, selection of ancillary equipment, initiation of exposure, and darkroom procedures.

(7) "Permit" means an authorization which may be granted by the board to perform x-ray procedures on persons when the applicant's qualifications do not meet standards required for the issuance of a license.

(8) "Radiologic technologist" means a person other than a licensed practitioner who has qualified under the provisions of this chapter for the issuance of a license to perform diagnostic x-ray procedures on persons and who performs the following functions in connection with the diagnostic procedure:

(a) operates x-ray equipment to reveal the internal condition of patients for the diagnosis of fractures, diseases, and other injuries;

(b) prepares and positions patients for x-ray procedures;

(c) selects the proper radiographic technique for visualization of specific internal structures of the human body;

(d) selects the proper ancillary equipment to be utilized in the x-ray procedure to enhance the visualization of the desired structure;

(e) prepares film processing solutions and develops or processes the exposed x-ray film; and

(f) inspects, maintains, and performs minor repairs to x-ray equipment.

History: **En. 66-3701 by Sec. 1, Ch. 336, L. 1975; amd. Sec. 1, Ch. 310, L. 1977; R.C.M. 1947, 66-3701; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 25, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 2, Ch. 166, L. 1985; amd. Sec. 46, Ch. 83, L. 1989.**

Part 2

Board of Radiologic Technologists

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1848.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-14-201. Compensation of board members — meetings — quorum. (1) Board members shall receive compensation and travel expenses as provided for in 37-1-133.

(2) The board shall meet at least twice a year and elect a chairman at the first meeting of each calendar year.

(3) Four members of the board constitute a quorum for the purpose of transacting business.

History: **En. 66-3703 by Sec. 4, Ch. 336, L. 1975; amd. Sec. 13, Ch. 453, L. 1977; R.C.M. 1947, 66-3703; amd. Sec. 18, Ch. 474, L. 1981.**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Allocation for administrative purposes only, 2-15-121.

Quasi-judicial boards, 2-15-124.

Duty of Department to provide facilities, 37-1-101.

Duties of boards, 37-1-131.

Disrupting meeting as disorderly conduct, 45-8-101.

37-14-202. Rulemaking power. The board may promulgate rules necessary to carry out the provisions of this chapter and adjudicate contested cases under it.

History: **En. 66-3704 by Sec. 5, Ch. 336, L. 1975; R.C.M. 1947, 66-3704.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-14-301. Limitation of license authority — exemptions. (1) No person may perform x-ray procedures on a person unless licensed or granted a limited permit under this chapter, with the following provisos:

(a) Licensure is not required for:

(i) a student enrolled in and attending a school or college of medicine, osteopathy, podiatry, dentistry, dental hygiene, chiropractic, or radiologic technology who applies x-ray radiation to persons under the specific direction of a person licensed to prescribe such examinations or treatment;

(ii) a person administering x-ray examinations related to the practice of dentistry or denturitry, provided such person is certified by the board of dentistry as having passed an examination testing his proficiency to administer x-ray examinations; or

(iii) a person who performs only darkroom procedures and is under the supervision of a licensed radiologic technologist or radiologist or is able to show evidence of completion of formal training in darkroom procedures as established by rule.

(b) Nothing in this chapter shall be construed to limit or affect in any respect the practice of their respective professions by duly licensed practitioners.

(2) A person licensed as a radiologic technologist may perform x-ray procedures on persons for medical, diagnostic, or therapeutic purposes under the specific direction of a person licensed to prescribe such procedures.

(3) A radiologic technologist licensed under this chapter may inject contrast media and radioactive isotopes (radio-nuclide material) intravenously upon request of a duly licensed practitioner. In the case of contrast media, the licensed practitioner requesting the procedure or the radiologist must be immediately available within the x-ray department. Such injections must be for diagnostic studies only and not for therapeutic purposes. The permitted injections include peripheral intravenous injections but specifically exclude intra-arterial or intracatheter injections. An uncertified radiologic technologist, a limited permit technician under 37-14-306, or an individual who is not licensed or authorized under another licensing act may not perform any of the activities listed in this subsection.

History: En. 66-3702 by Sec. 2, Ch. 336, L. 1975; R.C.M. 1947, 66-3702; amd. Sec. 1, Ch. 150, L. 1981; amd. Sec. 26, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 3, Ch. 166, L. 1985; amd. Sec. 17, Ch. 548, L. 1985; amd. Sec. 47, Ch. 83, L. 1989.

37-14-302. Qualifications. (1) Each applicant for licensure as a radiologic technologist shall have satisfactorily completed a 24-month course of study in radiologic technology approved by the board.

(2) Each applicant for licensure as a radiologic technologist shall:

(a) be of good moral character;

(b) be at least 18 years of age; and

(c) not be addicted to intemperate use of alcohol or narcotic drugs.

History: En. 66-3705 by Sec. 6, Ch. 336, L. 1975; amd. Sec. 2, Ch. 310, L. 1977; R.C.M. 1947, 66-3705; amd. Sec. 2, Ch. 296, L. 1981.

Cross-References

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

37-14-303. Examination — application fee. (1) Examinations for licensure as a radiologic technologist shall include a written portion and may also include practical and oral portions as established by the board.

(2) The board shall provide applicants for licensure the opportunity for examinations at intervals not to exceed 6 months.

(3) A nonrefundable examination fee, established by the board, shall be submitted prior to examination for licensure. An applicant failing the ex-

amination shall be charged a nonrefundable application fee for any subsequent examination. An applicant failing any subsequent examination is not eligible for reexamination until 12 months following the last failed examination.

History: En. 66-3706 by Sec. 7, Ch. 336, L. 1975; amd. Sec. 3, Ch. 310, L. 1977; R.C.M. 1947, 66-3706(1) thru (3); amd. Sec. 37, Ch. 345, L. 1981.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-14-304. Licensure by endorsement. The board may accept in lieu of its own examination a certificate of the American registry of radiologic technologists (ARRT) or a certificate, registration, or license issued by another state whose qualifications are at least equal to those set forth in this chapter.

History: En. 66-3706 by Sec. 7, Ch. 336, L. 1975; amd. Sec. 3, Ch. 310, L. 1977; R.C.M. 1947, 66-3706(4).

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-14-305. Issuance of license or permit — fee. The board shall issue a license or permit to each applicant who has submitted a nonrefundable licensing fee set by the board and has met the requirements of this chapter.

History: En. 66-3707 by Sec. 8, Ch. 336, L. 1975; amd. Sec. 5, Ch. 310, L. 1977; R.C.M. 1947, 66-3707(part); amd. Sec. 38, Ch. 345, L. 1981.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-14-306. Permits. (1) The board may issue a permit to an applicant not qualifying for the issuance of a license under the provisions of this chapter but who has demonstrated, to the satisfaction of the board, the capability of performing high-quality x-ray procedures without endangering public health and safety. An applicant must be required to demonstrate this capability by completion of formal classroom training that meets the standards established by rule and by means of examination. Permits issued under provisions of this section and 37-14-305 shall specify x-ray procedures, defined and established by rule, that may be performed by the holder. Permits shall be valid for a period not to exceed 12 months but may be renewed under the provisions established by rule.

(2) Examinations for the issuance of a permit must include a written portion and may also include practical and oral portions as established by the board. The board shall provide applicants for permits the opportunity for examination at intervals not to exceed 6 months. A nonrefundable examination fee, established by the board, must be submitted prior to examination for a permit. An applicant failing the examination must be charged a nonrefundable examination fee for any subsequent examination. An applicant failing any subsequent examination shall meet any additional eligibility requirements established by rule for reexamination.

(3) Applicants meeting minimum requirements for licensure shall be issued a temporary permit to work as a radiologic technologist. This tem-

porary permit shall expire 15 days after the date of first opportunity for examination.

(4) The board shall issue temporary permits to unlicensed persons to perform x-ray procedures when adequate evidence is provided the board that such a permit is necessary because of a regional hardship or emergency condition and that such person is capable of performing x-ray procedures without endangering public health and safety. Temporary permits may not exceed 12 months in duration but may be renewed by reestablishing, to the board's satisfaction, evidence of continued regional hardship or emergency conditions. The required adequate evidence of regional hardship, emergency conditions, and capability to perform x-ray procedures without endangering public health and safety must be established by rule.

(5) Each applicant for a permit must:

(a) be of good moral character;

(b) be at least 18 years of age; and

(c) not be addicted to intemperate use of alcohol or narcotic drugs.

History: En. 66-3707 by Sec. 8, Ch. 336, L. 1975; amd. Sec. 5, Ch. 310, L. 1977; R.C.M. 1947, 66-3707(2) thru (4); amd. Sec. 4, Ch. 166, L. 1985.

37-14-307. Duty to carry, display license or permit. Each radiologic technologist or limited permit technician shall carry or display his license or permit while at work. The license or permit shall be displayed on request.

History: En. 66-3707 by Sec. 8, Ch. 336, L. 1975; amd. Sec. 5, Ch. 310, L. 1977; R.C.M. 1947, 66-3707(5); amd. Sec. 5, Ch. 166, L. 1985.

37-14-308. Issuance of other documents. The board may issue to licensees or permittees such other cards, certificates, or documents as it considers necessary or convenient to the proper administration of this chapter.

History: En. 66-3707 by Sec. 8, Ch. 336, L. 1975; amd. Sec. 5, Ch. 310, L. 1977; R.C.M. 1947, 66-3707(6).

37-14-309. Replacement documents. The board may charge a reasonable fee for the replacement or duplication of a certificate, license, permit, or other document issued pursuant to this chapter.

History: En. 66-3709.1 by Sec. 9, Ch. 310, L. 1977; R.C.M. 1947, 66-3709.1.

37-14-310. Annual renewal — fee — reissuance of license. (1) Licenses expire annually on the date established by rule of the department.

(2) A license shall be renewed by the board upon payment of a license fee set by the board and submission of a renewal application containing such information as the board considers necessary to show that the applicant for renewal is a radiologic technologist in good standing.

(3) A radiologic technologist who has been licensed in Montana and whose license has not been revoked or suspended and who has temporarily ceased activities as a radiologic technologist for not more than 5 years may apply for reissuance of a license upon complying with the provisions of this section, including payment of an application fee.

History: En. 66-3709 by Sec. 10, Ch. 336, L. 1975; amd. Sec. 8, Ch. 310, L. 1977; R.C.M. 1947, 66-3709; amd. Sec. 5, Ch. 390, L. 1983; amd. Sec. 6, Ch. 166, L. 1985.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-14-311. Deposit of fees. Fees collected by the department shall be deposited in the state special revenue fund for the use of the board in administering this chapter.

History: En. 66-3707 by Sec. 8, Ch. 336, L. 1975; amd. Sec. 5, Ch. 310, L. 1977; R.C.M. 1947, 66-3707(part); amd. Sec. 1, Ch. 277, L. 1983.

37-14-312. Repealed. Sec. 3, Ch. 296, L. 1981.

History: En. 66-3708.1 by Sec. 7, Ch. 310, L. 1977; amd. Sec. 1, Ch. 573, L. 1977; R.C.M. 1947, 66-3708.1(1)(b).

37-14-313 through 37-14-320 reserved.

37-14-321. Revocation or suspension of license or permit. A license or permit may be suspended for a fixed period or may be revoked, or such technologist or technician may be censured, reprimanded, or otherwise disciplined as determined by the board if, after a hearing before the board, it is determined that the radiologic technologist or limited permit technician:

(1) is guilty of fraud or deceit in activities as a radiologic technologist or limited permit technician or has been guilty of any fraud or deceit in procuring the license or permit;

(2) has been convicted in a court of competent jurisdiction of a crime involving moral turpitude;

(3) is an habitual drunkard or is addicted to the use of narcotics or other drugs having a similar effect or is not mentally competent;

(4) is guilty of unethical or unprofessional conduct, as defined by rules promulgated by the board, including fraud, misrepresentation, or deception with regard to a claim for benefits under Title 39, chapter 71 or 72, or has been guilty of incompetence or negligence in activities as a radiologic technologist or limited permit technician;

(5) has continued to perform as a radiologic technologist or limited permit technician without obtaining a license or permit or renewal as required by this chapter.

History: En. 66-3710 by Sec. 11, Ch. 336, L. 1975; R.C.M. 1947, 66-3710; amd. Sec. 7, Ch. 166, L. 1985; amd. Sec. 15, Ch. 619, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 619 in (4), near beginning after "unethical", inserted "or unprofessional" and after "board" inserted "including fraud, misrepresentation, or deception with regard to a claim for benefits under Title 39, chapter 71 or 72"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unethical conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-14-322. Inspections. Inspections for compliance with the provisions of this chapter may be performed by:

(1) the board of radiologic technologists;

(2) the department of commerce;

(3) the department of health and environmental sciences.

History: En. 66-3711 by Sec. 12, Ch. 336, L. 1975; R.C.M. 1947, 66-3711; amd. Sec. 3, Ch. 274, L. 1981.

37-14-323. Penalty for violation. A person or the employer of a person who violates any provisions of this chapter or rules adopted under this chapter is guilty of an offense and shall be fined not to exceed $500. Each day of violation constitutes a separate offense.

History: En. 66-3712 by Sec. 13, Ch. 336, L. 1975; R.C.M. 1947, 66-3712.

Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Criminal responsibility of corporations, 45-2-311.

CHAPTER 15

SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

Part 1 — General

37-15-101. Purpose.
37-15-102. Definitions.
37-15-103. Exemptions.

Part 2 — Board of Speech-Language Pathologists and Audiologists

37-15-201. Meetings.
37-15-202. Powers and duties of board and department.
37-15-203. Compensation and expenses.

Part 3 — Licensing

37-15-301. License required.
37-15-302. Application forms.
37-15-303. Qualifications.
37-15-304. Examination.
37-15-305. Practice pending disposition of application — waiver.
37-15-306. Issuance of license.
37-15-307. Application and examination fee — license fee — registration fee.
37-15-308. Renewal.
37-15-309. Continuing education required for renewal.
37-15-310. Deposit of moneys received.
37-15-311. Municipal tax prohibited.
37-15-312. Department to publish list of licensees and registrants.
37-15-313. Registration of aides.
37-15-314 through 37-15-320 reserved.
37-15-321. Denial, suspension, or revocation of license — reinstatement.
37-15-322. Penalty.
37-15-323. Injunction of unlawful practice.

Chapter Cross-References

Contracts by school districts for audiological services, 20-7-403(13).

Speech-language pathologist, audiologist-client privilege, 26-1-806.

Audiologist exempt from training period as hearing aid dispenser, 37-16-405.

Part 1
General

37-15-101. Purpose. The legislature of the state of Montana declares it to be a policy of this state that in order to safeguard the public health, safety, and welfare and to protect the public from being misled by incompetent, unscrupulous, and unauthorized persons and to protect the public from unprofessional conduct by qualified speech-language pathologists and audiologists and to help assure the availability of the highest possible quality speech-language pathology and audiology services to the communicatively handicapped people of this state, it is necessary to provide regulatory authority over persons offering speech-language pathology or audiology services to the public.

History: En. 66-3901 by Sec. 1, Ch. 543, L. 1975; R.C.M. 1947, 66-3901; amd. Sec. 6, Ch. 413, L. 1989.

37-15-102. Definitions. As used in this chapter, the following definitions apply:

(1) "ASHA" means the American speech-language and hearing association.

(2) "Association" means the Montana speech-language and hearing association.

(3) "Audiologist" means a person who practices audiology and who meets the qualifications set forth in this chapter. A person represents to the public that the person is an audiologist by incorporating in any title or description of services or functions that the person directly or indirectly performs the words "audiologist", "audiology", "audiometrist", "audiometry", "audiological", "audiometrics", "hearing clinician", "hearing clinic", "hearing therapist", "hearing therapy", "hearing center", "hearing aid audiologist", or any similar title or description of services.

(4) "Audiology aide" means any person meeting the minimum requirements established by the board of speech-language pathologists and audiologists who works directly under the supervision of a licensed audiologist.

(5) "Board" means the board of speech-language pathologists and audiologists provided for in 2-15-1849.

(6) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(7) "Practice of audiology" means rendering or offering to render a service in audiology to individuals or groups of individuals who have or are suspected of having hearing disorders. These services include:

(a) prevention, identification, measurement, testing, evaluation, prediction, consultation, habilitation, rehabilitation, instruction, and research;

(b) participating in hearing conservation and hearing aid and assistive listening device evaluation, prescription, preparation, dispensing, and orientation;

(c) fabricating ear molds;

(d) providing auditory training and speech reading;

(e) conducting tests of vestibular function;

(f) evaluating tinnitus;

(g) planning, directing, conducting, or supervising programs that render or offer to render a service in audiology; and

(h) speech or language screening, limited to a pass/fail determination.

(8) "Practice of speech-language pathology" means rendering or offering to render a service in speech-language pathology to individuals or groups of individuals who have or are suspected of having communication disorders. These services include:

(a) prevention, identification, measurement, testing, evaluation, prediction, consultation, habilitation, and rehabilitation;

(b) determining the need for augmentative communication systems and providing training in the use of these systems;

(c) planning, directing, conducting, or supervising programs that render or offer to render a service in speech-language pathology;

(d) nondiagnostic pure-tone air conduction, tympanometry, and acoustic reflex screening, limited to a pass/fail determination;

(e) aural rehabilitation, which includes services and procedures for facilitating adequate receptive and expressive communication in individuals with hearing impairment;

(f) oral motor rehabilitation, which includes services and procedures for evaluating and facilitating face, lip, and tongue mobility and control;

(g) cognitive retraining, which includes services and procedures for evaluating and facilitating memory, attention, reasoning, processing, judgment, and other related areas in individuals with language impairment resulting from head injury, stroke, or other insult; and

(h) dysphagia therapy, which includes services and procedures for evaluating and facilitating swallowing and feeding in those individuals with swallowing disorders.

(9) "Speech-language pathologist" means a person who practices speech-language pathology and who meets the qualifications set forth in this chapter. A person represents to the public that the person is a speech-language pathologist by incorporating in any title or description of services or functions that the person directly or indirectly performs the words "speech pathologist", "speech pathology", "speech correctionist", "speech corrections", "speech therapist", "speech therapy", "speech clinician", "speech clinic", "language pathologist", "language pathology", "voice therapist", "voice therapy", "voice pathologist", "voice pathology", "logopedist", "logopedics", "communicologist", "communicology", "aphasiologist", "aphasiology", "phoniatrist", "language therapist", "language clinician", or any similar title or description of services or functions.

(10) "Speech-language pathology aide" means a person meeting the minimum requirements established by the board who works directly under the supervision of a licensed speech-language pathologist.

(11) "Unethical conduct" means:

(a) the obtaining of a fee by fraud or misrepresentation;

(b) employing, directly or indirectly, any suspended or unlicensed person to perform any work covered by this chapter unless that person assumes the legal status of a supervised aide; or

(c) using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is misleading, deceiving, improbable, or untruthful.

History: En. 66-3902 by Sec. 2, Ch. 543, L. 1975; R.C.M. 1947, 66-3902; amd. Sec. 11, Ch. 22, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 2, Ch. 413, L. 1989; amd. Sec. 1, Ch. 93, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 93 in definition of practice of speech-language pathology inserted subsections referencing the services of oral motor rehabilitation, cognitive retraining, and dysphagia therapy; and made minor changes in style.

37-15-103. Exemptions. (1) Nothing in this chapter prevents a person licensed in this state under any other law from engaging in the profession or business for which he is licensed.

(2) Nothing in this chapter restricts or prevents activities of a speech-language pathology or audiology nature or the use of the official title of the position for which they were employed on the part of a speech-language pathologist or audiologist employed by federal agencies.

(3) Those persons performing activities described in subsection (2) of this section who are not licensed under this chapter must do so solely within the confines of or under the jurisdiction of the organization in which they are employed and may not offer speech-language pathology or audiology services to the public for compensation over and above the salary they receive for performance of their official duties with organizations by which they are employed. However, without obtaining a license under this chapter, these persons may consult or disseminate their research findings and scientific information to other accredited academic institutions or governmental agencies. They also may offer lectures to the public for a fee without being licensed under this chapter.

(4) Nothing in this chapter restricts activities and services of a student in speech-language pathology or audiology from pursuing a course of study in speech-language pathology or audiology at an accredited or approved college or university or an approved clinical training facility. However, these activities and services must constitute a part of his supervised course of study, and a fee may not accrue directly or indirectly to the student. These persons must be designated by the title "speech-language pathology (or audiology) intern", "speech-language pathology (or audiology) trainee", or a title clearly indicating the training status appropriate to his level of training.

(5) Nothing in this chapter restricts a person from another state from offering speech-language pathology or audiology services in this state if these services are performed for no more than 5 days in any calendar year and if the services are performed in cooperation with a speech-language pathologist or audiologist licensed under this chapter. However, by securing a temporary license from the board subject to limitations as the board may impose, a person not a resident of this state who is not licensed under this chapter but who is licensed under the law of another state that has established licensure requirements at least equivalent to those established by this chapter or who is the holder of the ASHA certificate of clinical competency in speech-language pathology or audiology or its equivalent may offer speech-language pathology

or audiology services in this state for no more than 30 days in any calendar year if the services are performed in cooperation with a speech-language pathologist or audiologist licensed under this chapter.

(6) Nothing in this chapter restricts any person holding a class A certificate issued by the conference of executives of American schools of the deaf from performing the functions for which he qualifies.

(7) Nothing in this chapter restricts any person who holds a certificate of registration in this state as a hearing aid dealer from performing those functions for which he qualifies and that are described in Title 37, chapter 16.

(8) Nothing in this chapter exempts an audiologist who sells, dispenses, or fits hearing aids from the licensing requirements or other provisions of Title 37, chapter 16.

History: En. 66-3904 by Sec. 4, Ch. 543, L. 1975; R.C.M. 1947, 66-3904; amd. Sec. 3, Ch. 413, L. 1989.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Regulation of hearing aid dispensers, Title 37, ch. 16.

Part 2

Board of Speech-Language Pathologists and Audiologists

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1849.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-15-201. Meetings. (1) The board shall meet at least once a year at a place, day, and hour determined by the board. The board shall also meet at other times and places as the bylaws of the board may provide or by call of the chairman or a majority of the members of the board. A quorum of the board shall consist of the majority of its members, but in no instance may a meeting of three board members who are exclusively speech-language pathologists or exclusively audiologists be considered a quorum.

(2) All meetings of the board for the consideration of and action on matters coming before the board are open to the public except:

(a) matters involving the management of internal affairs of the board may be considered and acted upon by the board in executive meetings under rules prescribed by the board;

(b) sessions to prepare, approve, grade, or administer examinations;

(c) upon request of a person who has failed the licensing examinations and who is appearing to appeal the failure.

History: En. 66-3905 by Sec. 6, Ch. 543, L. 1975; amd. Sec. 14, Ch. 453, L. 1977; amd. Sec. 5, Ch. 531, L. 1977; R.C.M. 1947, 66-3905(1), (4); amd. Sec. 6, Ch. 413, L. 1989.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Duty of Department to provide facilities, 37-1-101.

Disrupting meeting as disorderly conduct, 45-8-101.

37-15-202. Powers and duties of board and department. (1) The board shall:

(a) administer, coordinate, and enforce the provisions of this chapter;

(b) evaluate the qualifications of each applicant for a license as issued under this chapter and supervise the examination of such applicants;

(c) investigate persons engaging in practices which allegedly violate the provisions of this chapter;

(d) conduct hearings and keep records and minutes as the board considers necessary to an orderly dispatch of business;

(e) adopt rules, including but not limited to those governing ethical standards of practice under this chapter;

(f) make recommendations to the governor and other state officials regarding new and revised programs and legislation related to speech-language pathology or audiology which could be beneficial to the citizens of the state of Montana;

(g) cause the prosecution and enjoinder of all persons violating this chapter, by the complaints of its secretary filed with the county attorney in the county where the violation took place, and incur necessary expenses therefor;

(h) adopt a seal by which the board shall authenticate its proceedings.

(2) Copies of the proceedings, records, and acts of the board, signed by the chairman or secretary of the board and stamped with the seal, shall be prima facie evidence of the validity of such documents.

(3) The board may make rules which are reasonable or necessary for the proper performance of its duties and for the regulation of proceedings before it.

(4) The department may employ persons it considers necessary to carry out the provisions of this chapter.

(5) The department shall prepare a report to the governor as required by law.

History: En. 66-3905 by Sec. 6, Ch. 543, L. 1975; amd. Sec. 14, Ch. 453, L. 1977; amd. Sec. 5, Ch. 531, L. 1977; R.C.M. 1947, 66-3905(3), (5) thru (7); amd. Sec. 6, Ch. 413, L. 1989.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Public records, Title 2, ch. 6.

Allocation for administrative purposes only, 2-15-121.

Quasi-judicial boards, 2-15-124.

Duties of Department, 37-1-101.

Biennial report to Governor and Legislature, 37-1-106.

Duties of boards, 37-1-131.

37-15-203. Compensation and expenses. Each board member shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. 66-3905 by Sec. 6, Ch. 543, L. 1975; amd. Sec. 14, Ch. 453, L. 1977; amd. Sec. 5, Ch. 531, L. 1977; R.C.M. 1947, 66-3905(2); amd. Sec. 19, Ch. 474, L. 1981.

Part 3
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-15-301. License required. (1) A license shall be issued to qualified persons either in speech-language pathology or audiology. A person may be licensed in both areas if he meets the respective qualifications, and in such instances the license fee shall be as though for one license.

(2) No person may practice or represent himself as a speech-language pathologist or audiologist in this state unless he is licensed in accordance with the provisions of this chapter.

History: En. 66-3903 by Sec. 3, Ch. 543, L. 1975; R.C.M. 1947, 66-3903; amd. Sec. 6, Ch. 413, L. 1989.

37-15-302. Application forms. Application for examination for licensing a speech-language pathologist or audiologist shall be made upon forms prescribed by the board.

History: En. 66-3908 by Sec. 9, Ch. 543, L. 1975; R.C.M. 1947, 66-3908(1); amd. Sec. 6, Ch. 413, L. 1989.

Cross-References

Standardized forms, 37-1-101.

37-15-303. Qualifications. (1) To be eligible for licensing by the board as a speech-language pathologist or audiologist, the applicant must:

(a) meet the current academic, supervised clinical practicum, and postclassroom sponsored employment requirements of the ASHA;

(b) pass an examination approved by the board.

(2) The board shall determine the subject and scope of the examination.

History: En. 66-3906 by Sec. 7, Ch. 543, L. 1975; amd. Sec. 34, Ch. 101, L. 1977; R.C.M. 1947, 66-3906(part); amd. Sec. 6, Ch. 413, L. 1989.

Cross-References

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-15-304. Examination. (1) Except as otherwise provided in this chapter, an applicant shall be examined for speech-language pathology or audiology by the board and shall pay to the board, at least 30 days prior to the date of the examination, the examination fee for each examination as prescribed by this chapter.

(2) The board shall examine by written examination given at least twice a year at a time and place and under such supervision as the board may determine. In addition, an oral examination may be required by the board. Standards for acceptable performance shall be determined by the board.

(3) The board may waive the written examination for certification if the applicant has successfully passed the national examination in speech-language pathology or audiology.

(4) The board may examine or direct the applicant to be examined for knowledge in whatever theoretical or applied fields of speech-language

pathology or audiology as it considers appropriate. It may also examine the candidate with regard to his professional skills and his judgment in the utilization of speech-language pathology or audiology techniques and methods.

(5) The department shall maintain a permanent record of all examination scores.

(6) The board shall keep an accurate transcript of the oral examination, if any. Transcripts of oral examinations shall be retained by the board for at least 1 year following the date of examination.

(7) An applicant who fails his examination may be reexamined at a subsequent examination upon payment of another examination fee. An applicant who fails two successive examinations may apply for reexamination after 2 years of additional professional experience or training.

History: (1) thru (6)En. 66-3909 by Sec. 10, Ch. 543, L. 1975; Sec. 66-3909, R.C.M. 1947; (7)En. 66-3906 by Sec. 7, Ch. 543, L. 1975; amd. Sec. 34, Ch. 101, L. 1977; Sec. 66-3906, R.C.M. 1947; R.C.M. 1947, 66-3906(part), 66-3909(1) thru (6); amd. Sec. 6, Ch. 413, L. 1989.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records, Title 2, ch. 6.

Duties of Department, 37-1-101.

37-15-305. Practice pending disposition of application — waiver. (1) A speech-language pathologist or audiologist who holds ASHA certification or equivalent or is licensed in another state and who has made application to the board for a license in this state may perform activities and services of a speech-language pathology or audiology nature without a valid license pending disposition of application.

(2) The board shall waive the examination and grant a license to applicants who present proof of a current license in a state which has standards equivalent to or greater than those of this state.

(3) The board shall waive the examination and grant a license to those who hold the certificate of clinical competence of the American speech-language and hearing association in the area for which they are applying for a license.

(4) The board shall, on presentation and documentation in writing by a petitioner, have the prerogative of granting licensure to an individual who does not have all the formal requirements specified in this chapter. This prerogative shall be used only for unusual or special circumstances and shall be determined by the board in each individual case.

History: En. 66-3908, 66-3909 by Secs. 9, 10, Ch. 543, L. 1975; R.C.M. 1947, 66-3908(3), (6) thru (8), 66-3909(7); amd. Sec. 4, Ch. 413, L. 1989.

37-15-306. Issuance of license. (1) The board shall grant a license to each person who meets the requirements for licensure as prescribed in this chapter, and the department shall issue the license.

(2) The license shall include the dates of issuance and expiration and shall bear a serial number.

(3) The license shall be signed by the secretary of the board under the seal of the board.

History: En. 66-3907 by Sec. 8, Ch. 543, L. 1975; R.C.M. 1947, 66-3907(1) thru (3).

37-15-307. Application and examination fee — license fee — registration fee. The amount of fees prescribed in connection with a license as a speech-language pathologist or audiologist and with registration as a speech-language pathology aide or audiology aide shall be determined by the board each year based on costs and predicted expenditures.

History: En. 66-3910 by Sec. 11, Ch. 543, L. 1975; R.C.M. 1947, 66-3910(1); amd. Sec. 39, Ch. 345, L. 1981; amd. Sec. 1, Ch. 368, L. 1985; amd. Sec. 6, Ch. 413, L. 1989.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-15-308. Renewal. (1) Each licensed speech-language pathologist or audiologist shall pay to the board the fee for the renewal of his license according to rules adopted by the department.

(2) The department shall notify each person licensed under this chapter relative to the date of expiration of his license and the amount of the renewal fee. This notice must be mailed to each licensed speech-language pathologist or audiologist at least 1 month before the expiration of the license.

(3) Renewal may be made at any time during the 60 days prior to the expiration date by application therefor. A renewal application must be accompanied with documentation satisfactory to the board that the applicant has fulfilled his continuing educational requirements as provided in 37-15-309.

(4) Failure on the part of any licensed person to pay the renewal fee by the expiration date does not deprive him of the right to renew his license, but the fee shall be increased 10% for each month that the payment of the renewal fee is delayed after the expiration date. The maximum fee for delayed renewal shall not exceed twice the normal renewal fee.

(5) Application for renewal following a lapse of 1 year or more shall be subject to review by the board, and the applicant may be requested to complete an examination successfully if the board so determines.

(6) A suspended license is subject to expiration and may be renewed as provided in this section, but such renewal does not entitle the licensee, while the license remains suspended, to engage in the licensed activity or in any other activity or conduct which violates the order or judgment by which the license was suspended.

(7) A license revoked on disciplinary grounds is subject to expiration, and it may not be renewed. If it is reinstated after its expiration, the licensee, as a condition of reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last preceding regular renewal date before the date on which it is reinstated plus the delinquency fee, if any, accrued at the time of its revocation.

(8) A person who fails to renew his license within 2 years after its expiration may not renew it, and it may not be restored, reissued, or reinstated thereafter; but such a person may reapply for and obtain a new license if he meets the requirements of this chapter.

History: En. 66-3907, 66-3910 by Secs. 8, 11, Ch. 543, L. 1975; R.C.M. 1947, 66-3907(4) thru (7), 66-3910(3) thru (7); amd. Sec. 2, Ch. 368, L. 1985; amd. Sec. 5, Ch. 413, L. 1989.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

37-15-309. Continuing education required for renewal. The board shall develop standards and methods of documentation and establish procedures for causing individuals who have been licensed to demonstrate continued education before renewing any license more than twice.

History: En. 66-3907 by Sec. 8, Ch. 543, L. 1975; R.C.M. 1947, 66-3907(9).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-15-310. Deposit of moneys received. All moneys received by the department shall be deposited in the state treasury to the credit of the state special revenue fund for the use of the board and subject to 37-1-101(6).

History: En. 66-3910 by Sec. 11, Ch. 543, L. 1975; R.C.M. 1947, 66-3910(2); amd. Sec. 1, Ch. 277, L. 1983.

37-15-311. Municipal tax prohibited. No license tax shall be imposed upon speech-language pathologists or audiologists by a municipality or any other subdivision of the state.

History: En. 66-3910 by Sec. 11, Ch. 543, L. 1975; R.C.M. 1947, 66-3910(8); amd. Sec. 6, Ch. 413, L. 1989.

37-15-312. Department to publish list of licensees and registrants. Each year the department shall publish a list of all persons licensed and registered under this chapter, containing their names and addresses and such other information as the board considers advisable. The department shall mail a copy of this list to each person licensed under this chapter, place a copy on file in the secretary of state's office, and furnish copies to the public upon request.

History: En. 66-3907 by Sec. 8, Ch. 543, L. 1975; R.C.M. 1947, 66-3907(8); amd. Sec. 3, Ch. 368, L. 1985.

Cross-References

Prohibition on distribution or sale of mailing lists, 2-6-109.

37-15-313. Registration of aides. Each licensed speech-language pathologist and audiologist shall annually, on or before October 31, register with a board on forms provided by the board all speech-language pathology aides and audiology aides working directly under the supervision of the licensee.

History: En. Sec. 4, Ch. 368, L. 1985; amd. Sec. 6, Ch. 413, L. 1989.

37-15-314 through 37-15-320 reserved.

37-15-321. Denial, suspension, or revocation of license — reinstatement. (1) The board may refuse to issue or renew a license or may suspend or revoke the license of any licensee if he has been guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare, or safety of the public. Such unprofessional conduct includes but is not limited to:

(a) obtaining a license by means of fraud, misrepresentation, or concealment of material facts;

(b) being found guilty of unprofessional conduct or having violated ethical standards of practice established pursuant to this chapter;

(c) violating any lawful order or rule of the board;

(d) violating any provision of this chapter.

(2) Where an applicant or licensee has been convicted of a felony or a crime involving moral turpitude, the board may suspend or revoke his license or may decline to issue a license when:

(a) the time for appeal has elapsed;

(b) the judgment of conviction has been affirmed on appeal;

(c) an order granting probation is made suspending the imposition of sentence.

(3) Denial, suspension, or revocation of a license is permissible only after a hearing and procedures which comply with all applicable requirements of the Montana Administrative Procedure Act.

(4) One year after denial, suspension, or revocation of a license, a person may reapply for a license. The board may in its discretion require an examination for reinstatement.

History: En. 66-3911 by Sec. 12, Ch. 543, L. 1975; R.C.M. 1947, 66-3911.

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unethical practices, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

37-15-322. Penalty. A person convicted of violating this chapter shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 66-3912 by Sec. 13, Ch. 543, L. 1975; R.C.M. 1947, 66-3912.

Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

37-15-323. Injunction of unlawful practice. The practice of speech-language pathology or audiology in any way other than as defined in this chapter may be enjoined by the district court on petition by the board.

History: En. 66-3913 by Sec. 14, Ch. 543, L. 1975; R.C.M. 1947, 66-3913; amd. Sec. 6, Ch. 413, L. 1989.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Disciplinary authority of boards — injunctions, 37-1-136.

CHAPTER 16

HEARING AID DISPENSERS

Part 1 — General

37-16-101. Declaration of policy.
37-16-102. Definitions.
37-16-103. Exemptions.

Part 2 — Board of Hearing Aid Dispensers

37-16-201. Meetings — quorum — organization.
37-16-202. Powers and duties.
37-16-203. Compensation of members — expenses.

Part 3 — Regulatory Provisions

37-16-301. Permanent place of business in state necessary — records — notice — designation of licensee in charge.
37-16-302. Sale of dispensing business.
37-16-303. Bill of sale — examination by otolaryngologist — notation on receipt that examination not medical opinion.
37-16-304. Right to cancel — return of hearing aid or related device — notice — refund.

Part 4 — Licensing

37-16-401. License required.
37-16-402. Application — qualifications — fee.
37-16-403. Examination — time and place — number of failures allowed.
37-16-404. Examination — subject areas.
37-16-405. Trainee license.
37-16-406. Admission of licensees from other states.
37-16-407. Renewal of license — fee — inactive status.
37-16-408. Deposit of fees, fines, and costs.
37-16-409 and 37-16-410 reserved.
37-16-411. Revocation or suspension of license — fines.
37-16-412. Revocation, suspension, or denial — notice and hearing.
37-16-413. Penalty for unlawful practice — injunction.
37-16-414. Restitution.

Part 1
General

37-16-101. Declaration of policy. The selling, dispensing, and fitting of hearing aids is hereby declared to affect the public health and welfare and is subject to regulation and control in the public interest. This chapter shall be liberally construed to carry out the objectives and purposes hereinafter described in accordance with this declaration of policy.

History: En. Sec. 1, Ch. 204, L. 1969; R.C.M. 1947, 66-3001; amd. Sec. 1, Ch. 404, L. 1985.

37-16-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of hearing aid dispensers provided for in 2-15-1850.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Hearing aid" means an instrument or device designed for or represented as aiding or improving defective human hearing and parts, attachments, or accessories of the instrument or device.

(4) "License" means a regular or trainee license.

(5) "Practice of selling, dispensing, and fitting hearing aids" means the evaluation or measurement of the powers or range of human hearing by means of an audiometer and a visual examination of the ear and canal or by any other means devised and the consequent selection, adaption, sale, dispensing, or fitting of hearing aids intended to compensate for hearing loss, including eyeglass hearing aids and their fittings, and the making of an impression of the ear and the subsequent selection of a proper ear mold, but does not include batteries, cords, or accessories.

History: En. Sec. 3, Ch. 204, L. 1969; amd. Sec. 292, Ch. 350, L. 1974; R.C.M. 1947, 66-3003; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 4, Ch. 444, L. 1981; amd. Sec. 2, Ch. 404, L. 1985.

37-16-103. Exemptions. (1) This chapter does not apply to a person who is a physician licensed to practice by the state board of medical examiners.

(2) This chapter does not apply to a person while he is engaged in the practice of fitting hearing aids if his practice is part of the academic curriculum of an accredited institution of higher education or part of a program conducted by a public agency.

History: En. Sec. 9, Ch. 204, L. 1969; amd. Sec. 297, Ch. 350, L. 1974; R.C.M. 1947, 66-3009; amd. Sec. 3, Ch. 404, L. 1985.

Part 2

Board of Hearing Aid Dispensers

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1850.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-16-201. Meetings — quorum — organization. (1) The board shall meet at least once each year at a place and time determined by the chairman and at other times and places specified by the chairman to carry out this chapter. Three members constitute a quorum.

(2) Members of the board shall annually designate one member to serve as chairman and another member to serve as secretary-treasurer.

History: En. Sec. 6, Ch. 204, L. 1969; amd. Sec. 295, Ch. 350, L. 1974; R.C.M. 1947, 66-3006; amd. Sec. 5, Ch. 444, L. 1981.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Duty of Department to provide facilities, 37-1-101.

Disrupting meeting as disorderly conduct, 45-8-101.

37-16-202. Powers and duties. The powers and duties of the board are to:

(1) license persons who apply and are qualified to practice the fitting of hearing aids;

(2) establish a procedure to act as a grievance board to receive, investigate, and mediate complaints from any source concerning the activities of persons licensed under this chapter or their agents, whether licensed or not;

(3) suspend or revoke licenses under this chapter;

(4) designate the time and place for examining applicants for license and supervise and administer the examination;

(5) adopt rules necessary to carry out this chapter;

(6) require the periodic inspection and calibration of audiometric testing equipment and carry out periodic inspections of facilities of persons who practice the fitting or selling of hearing aids;

(7) prepare examinations required by the chapter;

(8) initiate legal action to enjoin from operation a person or corporation engaged in the sale, dispensing, or fitting of hearing aids in this state who is not licensed under this chapter;

(9) adopt rules consistent with the provisions of 37-16-301, 37-16-303, 37-16-304, 37-16-402, 37-16-403, 37-16-405, 37-16-407, 37-16-408, 37-16-411, and 37-16-414. Rules adopted by the board may include but are not limited to rules defining the term "related devices" and other rules necessary to implement 37-16-301, 37-16-303, 37-16-304, 37-16-402, 37-16-403, 37-16-405, 37-16-407, 37-16-408, 37-16-411, and 37-16-414.

History: En. Sec. 5, Ch. 204, L. 1969; amd. Sec. 294, Ch. 350, L. 1974; R.C.M. 1947, 66-3005; amd. Sec. 6, Ch. 444, L. 1981; amd. Sec. 4, Ch. 404, L. 1985; (9)En. Sec. 11, Ch. 155, L. 1991.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation for administrative purposes only, 2-15-121.

Quasi-judicial boards, 2-15-124.

Duty of Department to administer and grade examinations, 37-1-101.

Duties of boards, 37-1-131.

Disciplinary authority of boards — injunctions, 37-1-136.

37-16-203. Compensation of members — expenses. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 20, Ch. 204, L. 1969; amd. Sec. 303, Ch. 350, L. 1974; amd. Sec. 44, Ch. 439, L. 1975; R.C.M. 1947, 66-3020(2); amd. Sec. 12, Ch. 22, L. 1979; amd. Sec. 20, Ch. 474, L. 1981.

Part 3

Regulatory Provisions

37-16-301. Permanent place of business in state necessary — records — notice — designation of licensee in charge. (1) A person who is actively engaged in dispensing hearing aids and related devices as a business must have a permanent place of business in this state that will be opened to serve the public, having the necessary testing, fitting, and hearing aid accessories needed by the hard-of-hearing public in the wearing of hearing aids and related devices. All licensed hearing aid dispensers shall identify their permanent place of business in all advertising public notices and in all consumer correspondence, both written and verbal. More than one hearing aid dispenser licensee may work from a permanent place of business.

(2) The department shall keep a record of the places of practice of persons who hold regular licenses or trainee licenses. A notice required to be given by the board or department to a person who holds a regular or trainee license may be given by mailing it to him at the address last given by him to the department.

(3) All licensed hearing aid dispensers shall notify the board of any change of address within 30 days of the change. A trainee shall notify the board of any change of address within 10 days of the change.

(4) (a) When licensed hearing aid dispensers and trainees work at the same permanent place of business, the licensed hearing aid dispenser shall designate one licensed dispenser as the person in charge. There must be one licensed dispenser in charge at a permanent place of business.

(b) The licensed hearing aid dispenser in charge of a permanent place of business:

(i) is responsible and accountable under the disciplinary authority of the board for the conduct of trainees using that permanent place of business; and

(ii) has custody and control of the business records of that permanent place of business and is responsible for producing the records during an investigation conducted by the board.

History: **En. Sec. 15, Ch. 204, L. 1969; amd. Sec. 300, Ch. 350, L. 1974; R.C.M. 1947, 66-3015; amd. Sec. 7, Ch. 444, L. 1981; amd. Sec. 5, Ch. 404, L. 1985; amd. Sec. 1, Ch. 155, L. 1991.**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records, Title 2, ch. 6.

Duties of Department, 37-1-101.

37-16-302. Sale of dispensing business. A business selling, dispensing, or fitting hearing aids may be sold provided the new owners comply with all the provisions of this chapter.

History: **En. Sec. 18, Ch. 204, L. 1969; R.C.M. 1947, 66-3018; amd. Sec. 6, Ch. 404, L. 1985.**

37-16-303. Bill of sale — examination by otolaryngologist — notation on receipt that examination not medical opinion. (1) Any person who practices the selling, fitting, or dispensing of hearing aids and related devices shall deliver to each person supplied with a hearing aid or related device, by him or at his order or direction, a bill of sale that must contain:

(a) the seller's signature, the name and address of his permanent place of business, and the number of his license;

(b) a description of the make and type of the hearing aid or related device furnished and the amount charged;

(c) any warranty or guaranty and the right to cancel, and the terms of the warranty or guaranty and the right to cancel;

(d) the condition of the hearing aid or related device and whether it is new, used, or reconditioned; and

(e) a provision that maintenance service for the hearing aid or related device is available.

(2) (a) Any person practicing the selling, dispensing, or fitting of hearing aids and related devices shall, if dealing with a person under 19 years of age, ascertain if the person has been examined by an otolaryngologist within 90 days prior to the fitting and shall obtain the otolaryngologist's recommenda-

tions. If the person has not been examined, the licensed hearing aid dispenser shall recommend to the parent or guardian or to the person if emancipated that he have a medical examination. The licensed hearing aid dispenser shall issue a separate receipt, signed by the purchaser, indicating that the hearing aid dispenser made this recommendation.

(b) Any person practicing the selling, dispensing, or fitting of hearing aids and related devices shall, if the aid or device is to be purchased with state funds, ascertain if the person has been examined by a licensed physician within 90 days prior to the fitting and shall obtain the licensed physician's recommendations. If the person has not been examined, the licensed hearing aid dispenser shall recommend to the person being fitted that he have a medical examination. The licensed hearing aid dispenser shall issue a separate receipt, signed by the purchaser, indicating that the hearing aid dispenser made this recommendation.

(3) A separate receipt issued under subsection (2) must bear, in no smaller type than the largest used in the body portion, the following: "Any examination(s) or representation(s) made by a licensed hearing aid dispenser in connection with the dispensing, fitting, and selling of this hearing aid(s) or device is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state and, therefore, must not be regarded as medical opinion or advice."

(4) The board may establish and adopt minimum requirements for the form of bills of sale and receipts.

(5) All purchase agreements or bills of sale must prominently display the following statement: "If you have any questions regarding your consumer rights with respect to hearing aids and related devices, please contact the Department of Commerce — Board of Hearing Aid Dispensers."

History: En. Sec. 8, Ch. 204, L. 1969; R.C.M. 1947, 66-3008; amd. Sec. 7, Ch. 404, L. 1985; amd. Sec. 2, Ch. 155, L. 1991.

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

37-16-304. Right to cancel — return of hearing aid or related device — notice — refund. (1) A purchaser of a hearing aid or related device may cancel the sale within 30 days of the date of delivery of the hearing aid or related device if:

(a) the hearing aid or related device is defective in fit or function; or

(b) a licensed hearing aid dispenser has failed to correct a problem in fit or function.

(2) (a) If a purchaser cancels the sale of a hearing aid or related device for a reason provided in subsection (1), he shall provide written notice to the seller indicating his intention not to be bound by the sale contract. The purchaser shall also return the hearing aid or related device in substantially the same condition as it was received by the purchaser.

(b) For the purpose of determining whether cancellation has occurred within 30 days of the date of delivery, written notice:

(i) given by mail is considered given on the date mailed; and

(ii) delivered in person is given when delivered to the hearing aid dispenser's permanent place of business.

(3) A licensed hearing aid dispenser shall refund to the purchaser the amount paid for the hearing aid or related device minus the dispensing fee within 30 days of receipt of written notice of cancellation. For the purposes of this section, the dispensing fee may not exceed 20% of the total cost of the hearing aid or related device.

(4) All sales receipts for refunds issued by the seller of a hearing aid or related device must contain a statement of the reason for the cancellation.

History: En. Sec. 10, Ch. 155, L. 1991.

Part 4
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-16-401. License required. A person may not engage in selling, dispensing, or fitting hearing aids or display a sign or in any other way advertise or hold himself out as a person who practices the selling, dispensing, or fitting of hearing aids in Montana unless he holds a current regular or temporary license issued by the department.

History: En. Sec. 7, Ch. 304, L. 1969; amd. Sec. 296, Ch. 350, L. 1974; R.C.M. 1947, 66-3007; amd. Sec. 8, Ch. 404, L. 1985.

37-16-402. Application — qualifications — fee. An applicant for a license shall pay a fee fixed by the board and commensurate with the costs of processing and administering his application and related functions of the board and shall show to the satisfaction of the board that he:

(1) is a person of good moral character;

(2) has an education equivalent to a 4-year course in an accredited high school or holds a current license as an audiologist under Title 37, chapter 15; and

(3) is free of contagious or infectious disease.

History: En. Sec. 10, Ch. 204, L. 1969; R.C.M. 1947, 66-3010; amd. Sec. 40, Ch. 345, L. 1981; amd. Sec. 8, Ch. 444, L. 1981; amd. Sec. 9, Ch. 404, L. 1985; amd. Sec. 3, Ch. 155, L. 1991.

Cross-References

Standardized forms, 37-1-104.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-16-403. Examination — time and place — number of failures allowed. (1) An applicant for a license who is notified by the department that he has fulfilled the requirements of 37-16-402 shall appear at a time and place designated by the board to be examined by written and practical tests in order to demonstrate that he is qualified to practice the fitting of hearing aids and related devices.

(2) An applicant who fails two successive practical examinations is eligible for reexamination after a period of 2 years and the completion of additional training or education recognized by the board.

History: **En. Sec. 11, Ch. 204, L. 1969; amd. Sec. 298, Ch. 350, L. 1974; R.C.M. 1947, 66-3011; amd. Sec. 10, Ch. 404, L. 1985; amd. Sec. 4, Ch. 155, L. 1991.**

37-16-404. Examination — subject areas. The examination provided in 37-16-403 shall consist of a test of knowledge and practical tests of proficiency, where they apply, in the following areas as they pertain to the fitting of hearing aids:

(1) acoustics:
(a) general principles;
(b) the decibel;
(c) hearing and speech;
(2) the human ear:
(a) external;
(b) middle;
(c) inner;
(3) the hearing process;
(4) disorders of hearing:
(a) conductive;
(b) sensorineural;
(c) central;
(d) psychogenic;
(5) audiometry:
(a) pure tone;
(b) theory;
(c) procedures;
(d) speech;
(6) the hearing analysis:
(a) audiogram;
(b) auditory area;
(7) hearing aids:
(a) history;
(b) characteristics;
(c) components;
(8) practical use of the otoscope:
(a) earmold;
(b) impression;
(9) fittings:
(a) hearing aid;
(b) earmold;
(10) delivery and checkup; or
(11) any change as deemed necessary by the board.

History: **En. Sec. 12, Ch. 204, L. 1969; R.C.M. 1947, 66-3012; amd. Sec. 90, Ch. 370, L. 1987.**

37-16-405. Trainee license. (1) An applicant who fulfills the requirements of 37-16-402 and who has not previously applied to take the practical examination under 37-16-403 may apply to the board for a trainee license.

(2) On receiving an application under subsection (1), accompanied by a fee fixed by the board and commensurate with the cost of administering the license and related functions of the board and verification that the applicant has passed the written portion of the examination with a score of at least 70%,

the board shall issue a trainee license that entitles the applicant to engage in a 12-month training period during which he shall:

(a) pass the practical examination administered by the board before he may be issued a hearing aid dispenser's license;

(b) work for the first 90 days under the direct supervision of the sponsoring licensed hearing aid dispenser during which time he may do the testing necessary for proper selection and fitting of hearing aids and related devices and make necessary impressions. However, the delivery and final fitting of the hearing aid and related devices must be made by the trainee and his supervisor.

(c) work for the balance of the training period during which he may engage in all activities allowed a licensed hearing aid dispenser, under the general supervision of a licensed hearing aid dispenser.

(3) The training period must consist of a continuous 12-month term. Any break in training requires application for another trainee license under such rules as the board may prescribe.

(4) A trainee license may not be issued unless the board has on file an unrevoked statement from a qualified licensed hearing aid dispenser accepting responsibility for the trainee. Every licensed hearing aid dispenser supervising a trainee license holder must submit a quarterly report of the trainee's activities and training assignments, on forms furnished by the board. The supervisor is responsible for all hearing aid fittings of the trainee. A supervisor may terminate his responsibilities to the trainee by mailing by certified mail written notice to the board and the trainee.

(5) (a) If a person who holds a trainee license takes and fails to pass the practical examination given within his training period, the board may authorize the department to renew the trainee license for a period ending 30 days after the next examination. In no event may more than two renewals be permitted.

(b) The fee for renewal shall be set by the board commensurate with the cost of administering the license and related functions of the board.

(6) A person licensed as an audiologist under the provisions of Title 37, chapter 15, is exempt from the 12-month training period but is required to pass the examinations prescribed in this chapter.

(7) A licensed hearing aid dispenser who sponsors a trainee is directly responsible and accountable under the disciplinary authority of the board for the conduct of the trainee as if the conduct were the licensee's own.

(8) For the purposes of this section:

(a) "direct supervision" means the direct and regular observation and instruction of a trainee by a licensed hearing aid dispenser who is available in the same place of business for prompt consultation and treatment; and

(b) "general supervision" means oversight by a licensed hearing aid dispenser of those tasks and procedures that do not require the physical presence of the licensed dispenser on the business premises. However, the trainee remains under the licensed hearing aid dispenser's direction, control, responsibility, and evaluation.

History: **En. Sec. 14, Ch. 204, L. 1969; amd. Sec. 299, Ch. 350, L. 1974; R.C.M. 1947, 66-3014; amd. Sec. 41, Ch. 345, L. 1981; amd. Sec. 9, Ch. 444, L. 1981; amd. Sec. 11, Ch. 404, L. 1985; amd. Sec. 5, Ch. 155, L. 1991.**

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-16-406. Admission of licensees from other states. When the board determines that another state or jurisdiction has requirements equivalent to or higher than those in effect under this chapter for the practice of dispensing, fitting, and selling hearing aids and that the state or jurisdiction has a program equivalent to or stricter than the program for determining whether applicants under this chapter are qualified to sell, dispense, and fit hearing aids, the board may authorize the department to issue a license to applicants who hold current, unsuspended, and unrevoked licenses to fit, dispense, and sell hearing aids in the other state or jurisdiction. No such applicants for a license under this section are required to submit to or undergo a qualifying examination or the like, other than the payment of fees, if the person complies with all other requirements of this chapter.

History: En. Sec. 19, Ch. 204, L. 1969; amd. Sec. 302, Ch. 350, L. 1974; R.C.M. 1947, 66-3019; amd. Sec. 12, Ch. 404, L. 1985.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-16-407. Renewal of license — fee — inactive status. (1) A person who practices the fitting of hearing aids and related devices shall annually pay to the department a fee as set by the board for a renewal of his license. The fee must be fixed by the board to be commensurate with board costs in administering licensure and related board functions. The fee must be increased 10% for each month or major portion thereof that the payment of the renewal fee is delayed after the expiration date. The maximum fee for a delayed renewal may not exceed twice the normal renewal fee as set by the board. A person applying for renewal whose license was suspended for failure to renew is required to submit to the examinations described in 37-16-403 as a condition of renewal for a 3-year period after suspension.

(2) Each applicant for license renewal shall submit evidence showing completion of 4 hours of continuing education completed during the preceding 12 months. The requirements of the continuing education programs are to be determined by the board by rule.

(3) (a) The board may set standards and fees for issuing licenses that designate inactive status.

(b) An inactive licensee may be reinstated to active practice if he:

(i) applies for reinstatement;

(ii) pays a fee set by the board; and

(iii) produces proof satisfactory to the board of completion of the continuing education requirements established by the board.

History: En. Sec. 16, Ch. 204, L. 1969; amd. Sec. 301, Ch. 350, L. 1974; amd. Sec. 14, Ch. 215, L. 1975; R.C.M. 1947, 66-3016; amd. Sec. 42, Ch. 345, L. 1981; amd. Sec. 10, Ch. 444, L. 1981; amd. Sec. 13, Ch. 404, L. 1985; amd. Sec. 6, Ch. 155, L. 1991.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-16-408. Deposit of fees, fines, and costs. Fees, fines, and costs collected under this chapter, except those collected by a justice's court, must be deposited in the state special revenue fund for the use of the board, subject to appropriations and 37-1-101(6).

History: En. Sec. 20, Ch. 204, L. 1969; amd. Sec. 303, Ch. 350, L. 1974; amd. Sec. 44, Ch. 439, L. 1975; R.C.M. 1947, 66-3020(1); amd. Sec. 11, Ch. 444, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 14, Ch. 404, L. 1985; amd. Sec. 26, Ch. 557, L. 1987; amd. Sec. 7, Ch. 155, L. 1991.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

37-16-409 and 37-16-410 reserved.

37-16-411. Revocation or suspension of license — fines. A person licensed under this chapter may have his license revoked or suspended for a fixed period to be determined by the board or be fined not to exceed $500 per incident for any of the following causes:

(1) being convicted of a felony, subject to chapter 1, part 2, of this title. The record of the conviction or a certified copy from the clerk of the court where the conviction occurred or certification by the judge of the court is conclusive evidence of the conviction, except that if the person has been pardoned by a governor or the president of the United States, the conviction does not constitute grounds for revocation or suspension.

(2) securing a license under this chapter through fraud or deceit or false statements;

(3) the personal use of a false name or alias in the practice of his profession;

(4) violating any of the provisions of this chapter;

(5) obtaining any fee or making any sale by fraud or misrepresentation;

(6) knowingly employing, directly or indirectly, any suspended or unlicensed person to perform any work covered by this chapter;

(7) using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is improbable, misleading, deceptive, or untruthful;

(8) representing that the services or advice of a person licensed to practice medicine or possessing certification as an audiologist will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing aids and related devices if that is not true or using the terms "doctor", "clinic", "hearing clinic", "state registered", or other like words, abbreviations, or symbols which tend to connote the medical profession when that use is not accurate;

(9) permitting another to use his license or certificate;

(10) defaming competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations or falsely disparaging the products of competitors in any respect or their business methods, selling prices, values, credit terms, policies, or services;

(11) using any method of advertising prohibited by trade practice rules 1 through 17 of the federal trade commission;

(12) obtaining information concerning the business of a competitor by bribery of an employee or agent of such competitor, by false or misleading statements or representations, by the impersonation of one in authority, or by any other unlawful means;

(13) directly or indirectly giving or offering to give or permitting or causing to be given money or anything of value to any person who advises another in a professional capacity as an inducement to influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dispenser or influencing persons to refrain from dealing in the products of competitors;

(14) unethical conduct or gross incompetence or negligence in the performance of his duties, including repeated failure to make indicated medical referrals of his customers;

(15) selling a hearing aid or related device to a person who has not been given tests utilizing appropriate established procedures and instrumentation in fitting of hearing aids or related devices, except for the sale of a replacement hearing aid or a related device of the same make and model within 1 year of the original sale;

(16) falsifying hearing test or evaluation results or any associated client records;

(17) refusing to cooperate with an investigation by the board by:

(a) failing to furnish requested records or documents;

(b) failing to furnish a complete explanation of matters referred to in the complaint;

(c) failing to respond to a subpoena issued by the board;

(d) willfully misrepresenting any relevant fact to a board investigator; or

(e) attempting to discourage a potential witness from cooperating with a board investigator or from testifying by using threats, harassment, extortion, or bribery.

History: En. Sec. 17, Ch. 204, L. 1969; amd. Sec. 27, Ch. 101, L. 1977; R.C.M. 1947, 66-3017; amd. Sec. 15, Ch. 404, L. 1985; amd. Sec. 8, Ch. 155, L. 1991.

Cross-References

Duty of Department to investigate unethical conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Unfair trade practices and consumer protection, Title 37, ch. 14.

37-16-412. Revocation, suspension, or denial — notice and hearing. No license issued under this chapter may be suspended, revoked, denied, or renewal denied without notice and opportunity for a hearing as provided under the Montana Administrative Procedure Act.

History: En. Sec. 22, Ch. 204, L. 1969; amd. Sec. 304, Ch. 350, L. 1974; amd. Sec. 28, Ch. 101, L. 1977; R.C.M. 1947, 66-3022; amd. Sec. 12, Ch. 444, L. 1981.

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Reporting disciplinary actions against licensees, 37-1-105.

Disciplinary authority of boards — injunctions, 37-1-136.

37-16-413. Penalty for unlawful practice — injunction. (1) Any person who practices the selling, fitting, or dispensing of hearing aids without a valid license shall be guilty of a misdemeanor and upon conviction be fined not more than $500 or be imprisoned for not more than 90 days, or both.

(2) The board may enforce any provision of this chapter by injunction or by any other appropriate proceeding.

History: En. Sec. 21, Ch. 204, L. 1969; R.C.M. 1947, 66-3021; amd. Sec. 16, Ch. 404, L. 1985.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Disciplinary authority of boards — injunctions, 37-1-136.

37-16-414. Restitution. In addition to being disciplined for any of the activities described in 37-16-411, a person licensed under this chapter may be ordered to make restitution to a purchaser of the purchase price of a hearing aid or related device minus the dispensing fee. For the purposes of this section, the dispensing fee may not exceed 20% of the total cost of the hearing aid or related device.

History: En. Sec. 9, Ch. 155, L. 1991.

CHAPTER 17

PSYCHOLOGISTS

Part 1 — General

37-17-101. Purpose.
37-17-102. Definitions.
37-17-103. Limitation of license authority.
37-17-104. Exemptions.

Part 2 — Board of Psychologists

37-17-201. Meetings — expenses of members — attorney general as board attorney — seal.
37-17-202. Powers.

Part 3 — Licensing

37-17-301. License required.
37-17-302. Application — qualifications.
37-17-303. Examination.
37-17-304. Admission of licensees from other states.
37-17-305. Issuance of license.
37-17-306. Annual renewal.
37-17-307. Fees — deposit of fees.
37-17-308. Department to publish list of licensees.
37-17-309 and 37-17-310 reserved.
37-17-311. Denial or revocation of license — grounds — notice and hearing.
37-17-312. Penalty.
37-17-313. Injunction for unlawful practice.
37-17-314. Immunity from liability.
37-17-315 through 37-17-317 reserved.
37-17-318. Continuing education required.

Chapter Cross-References

Psychologist-client privilege, 26-1-807.

Validity of consent to medical treatment, Title 41, ch. 1, part 4.

Psychologists' duty to report child abuse, 41-3-201.

Part 1

General

37-17-101. Purpose. The legislature finds and declares that the practice of psychology in Montana affects the public health, safety, and welfare and should therefore be subject to regulation and control in the public interest in order to protect the public from the unauthorized and unqualified practice of psychology and from unprofessional conduct by persons licensed to practice psychology.

History: En. Sec. 1, Ch. 73, L. 1971; R.C.M. 1947, 66-3201.

37-17-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Accredited college or university" means a college or university accredited by the regional accrediting association for institutions of higher learning, such as the northwest association of secondary and higher schools.

(2) "Board" means the board of psychologists provided for in 2-15-1851.

(3) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(4) (a) "Practice of psychology" means the observation, description, interpretation, and modification of human behavior by the application of psychological principles, methods, and procedures for the purpose of eliminating symptomatic, maladaptive, or undesired behavior and improving interpersonal relations, work and life adjustment, personal effectiveness, and mental health.

(b) The practice of psychology includes but is not limited to psychological testing and evaluation or assessment of personal characteristics such as intelligence, personality, abilities, interests, aptitudes, and neuropsychological functioning; counseling, psychoanalysis, psychotherapy, hypnosis, biofeedback, and behavior analysis and therapy; diagnosis and treatment of mental and emotional disorders or disabilities, chemical dependency, substance abuse, and the psychological aspects of physical illness, accident, injury, or disability; and psychoeducational evaluation, therapy, remediation, and consultation.

(5) A person represents himself to be a "psychologist" when he holds himself out to the public by a title or description of services incorporating the words "psychologist", "psychological", "psychologic", or "psychology" and offers to render or renders psychological services defined in subsection (4) to individuals, groups, corporations, or the public, whether or not he does so for compensation or fee.

History: En. Sec. 2, Ch. 73, L. 1971; amd. Sec. 312, Ch. 350, L. 1974; R.C.M. 1947, 66-3202; amd. Sec. 13, Ch. 22, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 5, Ch. 324, L. 1981; amd. Sec. 1, Ch. 347, L. 1987.

37-17-103. Limitation of license authority. Nothing in this chapter shall be construed as permitting psychologists to prescribe drugs, perform surgery, or administer electroconvulsive therapy.

History: En. Sec. 14, Ch. 73, L. 1971; R.C.M. 1947, 66-3214(2).

37-17-104. Exemptions. This chapter does not prevent:

(1) qualified members of other professions, such as physicians, social workers, lawyers, pastoral counselors, or educators, from doing work of a psychological nature consistent with their training if they do not hold themselves out to the public by a title or description incorporating the words "psychology" or "psychologist";

(2) the activities, services, and use of an official title clearly delineating the nature and level of training on the part of a person in the employ of a federal, state, county, or municipal agency or of other political subdivisions or an educational or charitable institution insofar as these activities and services are a part of the duties of his office or position with the agency or institution;

(3) the activities and services of a student, intern, or resident in psychology pursuing a course of study at an accredited university or college or working in a generally recognized training center if these activities and services constitute a part of his supervised course of study;

(4) the activities and services of a person who is not a resident of this state in rendering consulting psychological services in this state when these services are rendered for a period which does not exceed, in the aggregate, 60 days during a calendar year if the person is authorized under the laws of the state or country of his residence to perform these activities and services; however, these persons shall report to the department the nature and extent of the services in this state if they exceed 10 days in a calendar year;

(5) a person authorized by the laws of the state or country of his former residence to perform activities and services, who has recently become a resident of this state and who has applied for a license in this state, from performing such activities and services pending disposition of his application;

(6) the use of the term "social psychologist" by a person who:

(a) has been graduated with a doctoral degree in sociology or social psychology from an institution and whose credits in sociology or social psychology are acceptable by a recognized educational institution;

(b) has passed comprehensive examinations in the field of social psychology as part of the requirement for the doctoral degree or who has had equivalent specialized training in social psychology; and

(c) has filed with the department a statement of facts demonstrating his compliance with this subsection;

(7) the offering of lecture services for a fee by a person exempted from licensing requirements by virtue of his employment;

(8) activities of a psychological nature on the part of a person who is a salaried employee of an accredited academic institution, governmental agency, research laboratory, or business corporation if he is performing the duties for which he is employed by the organization within the confines of the organization.

History: En. Sec. 3, Ch. 73, L. 1971; amd. Sec. 313, Ch. 350, L. 1974; R.C.M. 1947, 66-3203(2); amd. Sec. 14, Ch. 22, L. 1979; amd. Sec. 6, Ch. 324, L. 1981; amd. Sec. 2, Ch. 347, L. 1987.

Part 2

Board of Psychologists

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1851.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-17-201. Meetings — expenses of members — attorney general as board attorney — seal. (1) The board shall hold a regular annual meeting in which it shall select from its members a chairman and a secretary. Other regular meetings shall be held at such times as the rules of the board provide. Special meetings may be held at times considered necessary or advisable by the chairman and the majority of its members or on the request of the governor. Reasonable notice of meetings shall be given in the manner prescribed by the board. The quorum of the board consists of the majority of its members. The department shall keep a record of the board's proceedings.

(2) Each board member shall receive compensation and travel expenses as provided for in 37-1-133.

(3) The attorney general shall act as attorney for the board. He or his representative may sit as an ex officio member of the board in an advisory capacity only.

(4) The board shall adopt an official seal.

History: En. Sec. 5, Ch. 73, L. 1971; amd. Sec. 315, Ch. 350, L. 1974; amd. Sec. 12, Ch. 453, L. 1977; R.C.M. 1947, 66-3205(1), (2), (4), (5); amd. Sec. 21, Ch. 474, L. 1981.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Duties of Attorney General, 2-15-501.

Duty of Department to provide facilities, 37-1-101.

Disrupting meeting as disorderly conduct, 45-8-101.

37-17-202. Powers. (1) The board may make reasonable and necessary rules for the proper performance of its duties and for the regulation of proceedings before it.

(2) In addition to the other powers and duties set forth, the board may:

(a) revoke and suspend licenses;

(b) conduct hearings upon complaints concerning persons licensed under this chapter;

(c) cause the prosecution and enjoinder of all persons violating this chapter, by the complaint of its secretary signed with the county attorney, in the county where the violation took place and incur necessary expenses therefor;

(d) study and review new developments in research, training, and the practice of psychology and make recommendations to the governor and other state officials regarding new and revised programs and legislation related to psychology which could be beneficial to the citizens of the state of Montana;

(e) adopt rules for the administration of a continuing education program, including but not limited to accrediting education programs and establishing the number of hours of continuing education required for license renewal.

History: (1)En. Sec. 5, Ch. 73, L. 1971; amd. Sec. 315, Ch. 350, L. 1974; amd. Sec. 12, Ch. 453, L. 1977; Sec. 66-3205, R.C.M. 1947; (2)En. Sec. 7, Ch. 73, L. 1971; Sec. 66-3207, R.C.M. 1947; R.C.M. 1947, 66-3205(3), 66-3207; amd. Sec. 3, Ch. 671, L. 1991.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation for administrative purposes only, 2-15-121.

Quasi-judicial boards, 2-15-124.

Duties of boards, 37-1-131.

Part 3
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-17-301. License required. A person may not represent himself to be a psychologist or engage in the practice of psychology unless he is licensed under this chapter.

History: En. Sec. 3, Ch. 73, L. 1971; amd. Sec. 313, Ch. 350, L. 1974; R.C.M. 1947, 66-3203(1).

37-17-302. Application — qualifications. (1) Application for examination for licensing a psychologist shall be made on forms prescribed by the board.

(2) The board shall license as a psychologist any person who pays the prescribed fee, passes the prescribed examination, and submits evidence by oath that he:

(a) is a resident of or shows satisfactory evidence of intent to become a resident of this state at the time he is licensed;

(b) is at least 18 years of age;

(c) is of good moral character;

(d) (i) has received a doctoral degree in clinical psychology from an accredited college or university having an appropriate graduate program approved by the American psychological association;

(ii) has received a doctoral degree in psychology from an accredited college or university not approved by the American psychological association and has successfully completed a formal graduate retraining program in clinical psychology approved by the American psychological association; or

(iii) has received a doctoral degree in psychology from an accredited college or university, and whose course of studies meets minimum standards specified in rules by the board; and

(e) has completed at the time of application a minimum of 2 years of supervised experience in the practice, research, or teaching of psychology. One year of this experience shall be postdoctoral.

History: En. Sec. 8, Ch. 73, L. 1971; amd. Sec. 25, Ch. 94, L. 1973; amd. Sec. 317, Ch. 350, L. 1974; R.C.M. 1947, 66-3208(1), (2); amd. Sec. 3, Ch. 347, L. 1987; amd. Sec. 4, Ch. 671, L. 1991.

Cross-References

Rules for determining residency, 1-1-215.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Nondiscrimination in licensing, 49-3-204.

37-17-303. Examination. (1) The department shall administer examinations to qualified applicants for licensing at least once a year, subject to 37-1-101. The board shall determine the subject and scope of specialized psychological areas and techniques for examination. Examinations may be written, oral, or both. The board shall determine an acceptable level of performance for each examination.

(2) An applicant who fails his first examination may be reexamined at a subsequent examination on the payment of another examination fee. An applicant who fails two successive examinations may apply for reexamination after 1 year of additional professional experience or training.

History: En. Sec. 6, Ch. 73, L. 1971; amd. Sec. 316, Ch. 350, L. 1974; R.C.M. 1947, 66-3206(1), (2); amd. Sec. 4, Ch. 347, L. 1987.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

37-17-304. Admission of licensees from other states. A license without written examination may be issued to a psychologist licensed or certified in another state where the licensing or certification requirements are substantially equivalent to the requirements of this chapter or to a psychologist who is a diplomate in good standing of the American board of professional psychology.

History: En. Sec. 8, Ch. 73, L. 1971; amd. Sec. 25, Ch. 94, L. 1973; amd. Sec. 317, Ch. 350, L. 1974; R.C.M. 1947, 66-3208(3); amd. Sec. 58, Ch. 10, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 10 near beginning inserted "written" before "examination".

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-17-305. Issuance of license. The department shall issue a license to each person who meets the requirements for licensure as prescribed in this chapter. The license shall include the dates of issuance and expiration and shall bear a serial number. It shall be signed by the secretary of the board under the seal of the board.

History: En. Sec. 6, Ch. 73, L. 1971; amd. Sec. 316, Ch. 350, L. 1974; R.C.M. 1947, 66-3206(3).

37-17-306. Annual renewal. (1) The license expires on January 1 following the date of its issuance or renewal and is invalid thereafter. The department shall notify each person licensed under this chapter relative to the date of the expiration of his license and the amount of his renewal fee. This notice shall be mailed to each licensed psychologist at his listed address at least 1 month before the expiration of the license.

(2) Renewal may be made by application during the 60 days prior to the expiration date. Failure on the part of a person licensed to pay his renewal fee by the expiration date does not deprive him of the right to renew his license, but the fee shall be increased 10% for each month or major portion thereof that the payment of the renewal fee is delayed after the expiration date. The

maximum fee for delayed renewal may not exceed twice the normal renewal fee. Application for renewal following a lapse of 1 year or more will be subject to review by the board, and the applicant may be requested to complete an examination successfully if the board so determines.

(3) The board may charge an additional fee for license renewal to be used for administering the continuing education program established in 33-17-318.

History: En. Sec. 6, Ch. 73, L. 1971; amd. Sec. 316, Ch. 350, L. 1974; R.C.M. 1947, 66-3206(4), (5); amd. Sec. 5, Ch. 671, L. 1991.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

37-17-307. Fees — deposit of fees. (1) The department shall collect the following fees, none of which is refundable:

(a) application fee;

(b) examination fee, an amount commensurate with the charge of the professional examination service and administrative costs of the department and as set by the board;

(c) certificate fee;

(d) renewal fee, including an amount sufficient to cover the costs of administering the continuing education program.

(2) Renewal certificates shall be secured annually and dated January 2.

(3) Fees received by the department shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 11, Ch. 73, L. 1971; amd. Sec. 1, Ch. 59, L. 1974; amd. Sec. 319, Ch. 350, L. 1971; R.C.M. 1947, 66-3211; amd. Sec. 43, Ch. 345, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 6, Ch. 671, L. 1991.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-17-308. Department to publish list of licensees. The department shall publish yearly a list of psychologists licensed under this chapter. This list shall contain names and addresses and other information the board considers advisable. The department shall mail a copy of this list to each person licensed under this chapter, place a copy on file in the secretary of state's office, and furnish copies to the public on request.

History: En. Sec. 6, Ch. 73, L. 1971; amd. Sec. 316, Ch. 350, L. 1974; R.C.M. 1947, 66-3206(6).

Cross-References

Prohibition on distribution or sale of mailing lists, 2-6-109.

37-17-309 and 37-17-310 reserved.

37-17-311. Denial or revocation of license — grounds — notice and hearing. (1) The board may refuse or revoke a license applied for or issued under this chapter or apply other disciplinary sanctions on finding that the person to whom the license was issued:

(a) has been guilty of fraud or deceit in securing the license or a renewal;

(b) is using or has used a narcotic or an alcoholic beverage to an extent that the use impairs his ability to perform the work of a professional psychologist with safety to the public; or

(c) has been guilty of unprofessional conduct as defined by the rules adopted by the board.

(2) The board may not revoke or refuse to issue or renew a license for any cause other than failure to pay fees unless the person is given notice and opportunity for a hearing before the board.

History: En. Sec. 9, Ch. 73, L. 1971; amd. Sec. 318, Ch. 350, L. 1974; R.C.M. 1947, 66-3209; amd. Sec. 7, Ch. 324, L. 1981; amd. Sec. 5, Ch. 347, L. 1987.

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Nondiscrimination in licensing, 49-3-204.

37-17-312. Penalty. Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding 6 months or by a fine not exceeding $500, or by both.

History: En. Sec. 13, Ch. 73, L. 1971; R.C.M. 1947, 66-3213.

Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

37-17-313. Injunction for unlawful practice. The practice of psychology in any way other than as defined in this chapter may be enjoined by the district court on petition by the board. In any such proceeding, it shall not be necessary to show that any person is individually injured by the actions complained of. If the respondent is found to have so practiced, the court shall enjoin him from so practicing unless and until he has been duly licensed. Procedure in such cases shall be the same as in any other injunction suit. The remedy by injunction hereby given is in addition to criminal prosecution and punishment.

History: En. Sec. 14, Ch. 73, L. 1971; R.C.M. 1947, 66-3214(1).

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Disciplinary authority of boards — injunctions, 37-1-136.

37-17-314. Immunity from liability. There is no liability on the part of and no cause of action may arise against a psychologist for a statement made in good faith in reporting another psychologist's apparent violation of the provisions of this chapter or rules adopted by the board.

History: En. Sec. 7, Ch. 347, L. 1987.

Cross-References

Licensing investigation and review — record access, 37-1-135.

Health care practitioners — nonliability for peer review, Title 37, ch. 2, part 2.

Pharmacists — nonliability for peer review, 37-7-1101.

Physical therapists — nonliability for reporting violations to licensing Board, 37-11-320.

37-17-315 through 37-17-317 reserved.

37-17-318. Continuing education required. (1) A person's license to practice psychology may not be renewed unless the person has certified on a form prescribed by the board that he has obtained the number of hours of approved continuing education required by the board.

(2) A person demonstrating good cause for failing to obtain the required number of hours of continuing education through attendance of regularly accredited programs may comply with the continuing education requirement by completing an alternative program prescribed by the board. The board shall establish or approve alternative programs equivalent to the regularly accredited continuing education programs. The alternative programs may include home study courses, videotapes, examinations, or any other programs approved by the board.

History: En. Sec. 1, Ch. 671, L. 1991.

CHAPTER 18

VETERINARY MEDICINE

Part 1 — General

37-18-101. Definitions.
37-18-102. Veterinary medicine defined.
37-18-103. Repealed.
37-18-104. Exemptions — rules.

Part 2 — Board of Veterinary Medicine

37-18-201. Organization — meetings.
37-18-202. Powers of board and department — examinations — prosecutions.
37-18-203. Compensation and expenses of members — department records of board proceedings and licensees.

Part 3 — Licensing—Veterinary Medicine

37-18-301. License required.
37-18-302. Application — qualification — fee.
37-18-303. Examination — temporary permit pending examination.
37-18-304. Reciprocity.
37-18-305. License — issuance and contents.
37-18-306. Display of license and certificate.
37-18-307. Renewal — fee — continuing education — automatic renewal for military personnel.
37-18-308. Deposit of money.
37-18-309 and 37-18-310 reserved.
37-18-311. Refusal, suspension, or revocation of license — right to notice and hearing.
37-18-312 reserved.
37-18-313. Municipal license fee prohibited.

Part 4 — Licensing—Veterinary Technology
(Repealed. Sec. 7, Ch. 96, L. 1981)

Part 5 — Remedies for Violation

37-18-501. Penalty.
37-18-502. Injunction.

Chapter Cross-References

Veterinarian as member of Board of Health and Environmental Sciences, 2-15-2104.

Rules on veterinary practice to be included in standards for horseracing, 23-4-104.

Professional service corporations, Title 35, ch. 4.

Part 1
General

37-18-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of veterinary medicine provided for in 2-15-1852.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

History: En. 66-2201.1 by Sec. 205, Ch. 350, L. 1974; R.C.M. 1947, 66-2201.1; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 2, Ch. 43, L. 1985.

37-18-102. Veterinary medicine defined. (1) A person is considered practicing veterinary medicine when he does any of the following:

(a) represents himself as or is engaged in the practice of veterinary medicine in any of its branches, either directly or indirectly;

(b) uses words, titles, or letters in this connection or on a display or advertisement or under circumstances so as to induce the belief the person using them is engaged in the practice of veterinary medicine. This use is prima facie evidence of the intention to represent oneself as engaged in the practice of veterinary medicine in any of its branches.

(c) diagnoses, prescribes, or administers a drug, medicine, appliance, application, or treatment of whatever nature or performs a surgical operation or manipulation for the prevention, cure, or relief of a pain, deformity, wound, fracture, bodily injury, physical condition, or disease of animals;

(d) instructs, demonstrates, or solicits by a notice, sign, or other indication, with contract either express or implied, or otherwise, with or without the necessary instruments, for the administration of biologics or medicines or animal disease cures for the prevention and treatment of disease of animals and remedies for the treatment of internal parasites in animals;

(e) performs a manual or laboratory procedure on livestock for the diagnosis of pregnancy, sterility, or infertility for remuneration or hire;

(f) performs acupuncture, ova or embryo transfer, or dentistry on animals;

(g) instructs others, except those covered under the provisions of 37-18-104(4), for compensation, in any manner how to perform any acts which constitute the practice of veterinary medicine.

(2) Nothing in subsection (1)(e) of this section shall in any way be construed to prohibit the pregnancy testing by any person of his own farm animals or by his employees regularly employed in the conduct of his business or by other persons whose services are rendered gratuitously.

(3) Nothing in this section shall be construed as modifying, amending, altering, or repealing any part of 37-18-104.

History: (1)En. Sec. 9, Ch. 82, L. 1913; re-en. Sec. 3225, R.C.M. 1921; re-en. Sec. 3225, R.C.M. 1935; amd. Sec. 7, Ch. 90, L. 1955; amd. Sec. 1, Ch. 191, L. 1965; amd. Sec. 211, Ch. 350, L. 1974; amd. Sec. 7, Ch. 135, L. 1975; Sec. 66-2209, R.C.M. 1947; (2)En. Sec. 2, Ch. 191, L. 1965; Sec. 66-2209.1, R.C.M. 1947; (3)En. Sec. 3, Ch. 191, L. 1965; Sec. 66-2209.2, R.C.M. 1947; R.C.M. 1947, 66-2209(1), 66-2209.1, 66-2209.2; amd. Sec. 3, Ch. 43, L. 1985; amd. Sec. 1, Ch. 650, L. 1989.

37-18-103. Repealed. Sec. 7, Ch. 96, L. 1981.

History: En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(2).

37-18-104. Exemptions — rules. (1) This chapter does not apply to:

(a) veterinarians in the performance of their official duties, either civil or military, in the service of the United States unless they engage in the practice of veterinary medicine in a private capacity;

(b) laboratory technicians and veterinary research workers, as distinguished from veterinarians, in the employ of this state or the United States and engaged in labors in laboratories under the direct supervision of the board of livestock, Montana state university, or the United States;

(c) lawfully qualified veterinarians from other states or a foreign country meeting legally licensed and registered Montana veterinarians in this state in consultation;

(d) a veterinarian residing on a border of a neighboring state and authorized under the laws thereof to practice veterinary medicine therein, who is actually called to attend cases in this state but who does not open an office or appoint a place to meet patients or receive calls in this state, if veterinarians licensed and registered in this state are extended a like privilege to engage in the practice of veterinary medicine to the same extent in the neighboring state;

(e) the employment as assistants to veterinarians licensed and registered under this chapter of veterinary medical students who have successfully completed 3 years of the professional curriculum in veterinary medicine at a college having educational standards equal to those approved by the American veterinary medical association and authorized by law to confer degrees; or

(f) a person advising with respect to or performing acts that the board defines by rule as accepted livestock management practices.

(2) The operations known and designated as castrating or dehorning of cattle, sheep, horses, and swine are not the practice of veterinary medicine within the meaning of this chapter.

(3) (a) Nonsurgical embryo transfers in bovines may be performed, under the supervision of a veterinarian licensed and residing in Montana, by individuals who attest to the board that they possess a combination of 3 years' education, experience, and training in that procedure.

(b) Exemption under subsection (3)(a) remains in effect until testing and certification procedures, as determined by board rule, are implemented on or before July 1, 1991. At a minimum, board rules must address:

(i) minimum education requirements;

(ii) minimum requirements of practical experience;

(iii) continuing education requirements;

(iv) limitations on practices and procedures that may be performed by certified individuals;

(v) the use of specific drugs necessary for safe and proper practice of certified procedures;

(vi) content and administration of the certification test, including written and practical testing;

(vii) application and reexamination procedures;

(viii) conduct of certified individuals, including rules for suspension, revocation, and denial of certification; and

(ix) establishment of an advisory committee. The committee:

(A) must consist of:

(I) one member of the board who is a veterinarian;

(II) one member of the Montana state university reproductive physiology department;

(III) one member representing the Montana stockgrowers association animal health committee;

(IV) one member representing the Montana woolgrowers association;

(V) one reproductive specialist with practical experience in embryo transfers; and

(VI) a veterinarian who is a member of the American college of theriogenologists;

(B) shall make recommendations regarding the testing and certification procedures. The committee may not adopt rules.

(C) in cooperation with the board, shall conduct a study of the practice of bovine pregnancy testing and ovine pregnancy testing with the use of ultrasound equipment. The study must include but is not limited to:

(I) federal laws governing the practice of pregnancy testing;

(II) education and experience requirements for the practice of pregnancy testing; and

(III) pregnancy testing by nonveterinarians;

(D) terminates July 1, 1991.

(4) This chapter does not prohibit a person from caring for and treating his own farm animals or being assisted in this treatment by his full-time employees, as defined in 2-18-601, employed in the conduct of his business or by other persons whose services are rendered gratuitously in case of emergency.

(5) This chapter does not prohibit the selling of veterinary remedies and instruments by a registered pharmacist at his regular place of business.

History: En. Sec. 11, Ch. 82, L. 1913; re-en. Sec. 3227, R.C.M. 1921; re-en. Sec. 3227, R.C.M. 1935; amd. Sec. 9, Ch. 90, L. 1955; amd. Sec. 213, Ch. 350, L. 1974; amd. Sec. 8, Ch. 135, L. 1975; R.C.M. 1947, 66-2211; amd. Sec. 4, Ch. 43, L. 1985; amd. Sec. 2, Ch. 650, L. 1989; amd. Sec. 1, Ch. 21, L. 1991.

Part 2

Board of Veterinary Medicine

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1852.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-18-201. Organization — meetings. (1) A board member shall receive a certificate of appointment from the governor.

(2) The board shall annually elect from its members a president, vice-president, and secretary-treasurer and shall hold at least two regular meetings each year. At a meeting four members of the board constitute a quorum. If a member of the board, without cause, absents himself from two of its regular meetings consecutively, his office is vacant.

History: En. Sec. 2, Ch. 82, L. 1913; re-en. Sec. 3218, R.C.M. 1921; re-en. Sec. 3218, R.C.M. 1935; amd. Sec. 2, Ch. 90, L. 1955; amd. Sec. 206, Ch. 350, L. 1974; amd. Sec. 5, Ch. 135, L. 1975; R.C.M. 1947, 66-2202(1), (2).

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Duty of Department to provide facilities, 37-1-101.

Disrupting meeting as disorderly conduct, 45-8-101.

37-18-202. Powers of board and department — examinations — prosecutions. (1) The board may adopt rules and orders necessary for the performance of its duties, including but not limited to:

(a) development of continuing professional education requirements and exceptions therefrom;

(b) prescribing of forms for application for examination and license; and

(c) preparation of examinations.

(2) The department shall, subject to 37-1-101, supervise the examination of applicants for license to practice veterinary medicine, obtain the services of professional examination agencies instead of its own preparation of examinations, and grant and revoke licenses.

(3) The department may employ attorneys, subject to the approval of the attorney general, to assist county attorneys in prosecutions brought under this chapter in the respective district courts of the state or to assist the attorney general in representing the board before the supreme court.

History: En. Sec. 2, Ch. 82, L. 1913; re-en. Sec. 3218, R.C.M. 1921; re-en. Sec. 3218, R.C.M. 1935; amd. Sec. 2, Ch. 90, L. 1955; amd. Sec. 206, Ch. 350, L. 1974; amd. Sec. 5, Ch. 135, L. 1975; R.C.M. 1947, 66-2202(3), (4); amd. Sec. 3, Ch. 96, L. 1981; amd. Sec. 3, Ch. 650, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation for administrative purposes only, 2-15-121.

Quasi-judicial boards, 2-15-124.

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Duties of boards, 37-1-131.

37-18-203. Compensation and expenses of members — department records of board proceedings and licensees. (1) Each member of the board is entitled to receive compensation and travel expenses as provided for in 37-1-133.

(2) The department shall keep complete records of the board's proceedings and of its receipts and disbursements and a full and accurate list of persons licensed and registered by the board. These records are public records and are at all times open to public inspection.

History: En. Sec. 3, Ch. 82, L. 1913; re-en. Sec. 3219, R.C.M. 1921; re-en. Sec. 3219, R.C.M. 1935; amd. Sec. 3, Ch. 90, L. 1955; amd. Sec. 126, Ch. 147, L. 1963; amd. Sec. 27, Ch. 177, L. 1965; amd. Sec. 26, Ch. 93, L. 1969; amd. Sec. 207, Ch. 350, L. 1974; amd. Sec. 38, Ch. 439, L. 1975; amd. Sec. 3, Ch. 531, L. 1977; R.C.M. 1947, 66-2203(1), (2); amd. Sec. 22, Ch. 474, L. 1981.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records, Title 2, ch. 6.

Prohibition on distribution and sale of mailing lists, 2-6-109.

Duties of Department, 37-1-101.

Licensing investigation and review — record access, 37-1-135.

Part 3
Licensing — Veterinary Medicine

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-18-301. License required. A person may not practice veterinary medicine or veterinary surgery in this state unless licensed and registered as required by this chapter, nor may a person practice veterinary medicine or surgery whose authority to practice is suspended or revoked by the board.

History: En. Sec. 9, Ch. 82, L. 1913; re-en. Sec. 3225, R.C.M. 1921; re-en. Sec. 3225, R.C.M. 1935; amd. Sec. 7, Ch. 90, L. 1955; amd. Sec. 1, Ch. 191, L. 1965; amd. Sec. 211, Ch. 350, L. 1974; amd. Sec. 7, Ch. 135, L. 1975; R.C.M. 1947, 66-2209(2).

37-18-302. Application — qualification — fee. A person desiring to begin the practice of veterinary medicine or veterinary surgery in this state or who desires to hold himself out to the public as a practitioner of veterinary medicine or veterinary surgery, except as provided in 37-18-104, shall make application to the department for a license to do so. The application shall be on a form furnished by the department and shall be accompanied by satisfactory evidence of the good moral character of the applicant and shall present evidence of his having graduated in and received a degree from a legally authorized veterinary medical school having educational standards equal to those approved by the American veterinary medical association. On application, a photostatic copy of the diploma of the applicant shall be submitted to the department for inspection and verification. The photostatic copy remains the property of the department. A person applying for a license to practice shall pay to the department a nonrefundable fee commensurate with the costs of the examinations and set by the board.

History: En. Sec. 4, Ch. 82, L. 1913; amd. Sec. 1, Ch. 150, L. 1919; re-en. Sec. 3220, R.C.M. 1921; re-en. Sec. 3220, R.C.M. 1935; amd. Sec. 4, Ch. 90, L. 1955; amd. Sec. 127, Ch. 147, L. 1963; amd. Sec. 7, Ch. 168, L. 1971; amd. Sec. 208, Ch. 350, L. 1974; R.C.M. 1947, 66-2204(part); amd. Sec. 1, Ch. 431, L. 1979; amd. Sec. 5, Ch. 341, L. 1981; amd. Sec. 2, Ch. 21, L. 1991.

Cross-References

Standardized forms, 37-1-104.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Nondiscrimination in licensing, 49-3-204.

37-18-303. Examination — temporary permit pending examination. (1) Subject to 37-1-101, the board shall by means of examination, either oral, written, or practical or a combination of oral, written, or practical as the board determines, ascertain the professional qualifications for license of applicants under this part. An investigation under reciprocity arrangements may replace examination for licensees from other states under 37-18-304. The department shall issue a license to all who are found to be, in the judgment of the board, competent to practice. A license may not be issued to a person who is not found by the examination or investigation to be competent.

(2) The examination shall be held when determined necessary by the board, but not less frequently than once each year at a time and place specified

by the board. The examination shall cover theory and practice, pharmacology and therapeutics, animal sanitation, surgery, communicable diseases, and other subjects chosen by the board which are ordinarily included in the curriculum of a school of veterinary medicine recognized and approved by the American veterinary medical association.

(3) The department shall consecutively number applications received, note on each the disposition made of it, and preserve them for reference and shall number consecutively licenses issued.

(4) Applicants must achieve a grade of 70% in order to obtain a license. An applicant who has failed an examination may apply to be reexamined at a subsequent examination and shall pay another application fee commensurate with the costs of the examinations and set by the board and shall take another complete examination in all subjects.

(5) An applicant for examination may, in the discretion of the board, be given a temporary permit to practice veterinary medicine prior to taking the examination if the applicant is employed by and working under the supervision of and in the same office with a veterinarian licensed under this part. The temporary permit is valid only until the date of the next examination. Under no circumstances may a second temporary permit be issued to the same person. A temporary permit may not be issued to a person who has failed an examination given under this section.

History: En. Sec. 4, Ch. 82, L. 1913; amd. Sec. 1, Ch. 150, L. 1919; re-en. Sec. 3220, R.C.M. 1921; re-en. Sec. 3220, R.C.M. 1935; amd. Sec. 4, Ch. 90, L. 1955; amd. Sec. 127, Ch. 147, L. 1963; amd. Sec. 7, Ch. 168, L. 1971; amd. Sec. 208, Ch. 350, L. 1974; R.C.M. 1947, 66-2204(part); amd. Sec. 2, Ch. 431, L. 1979; amd. Sec. 4, Ch. 96, L. 1981; amd. Sec. 3, Ch. 21, L. 1991.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

37-18-304. Reciprocity. (1) The board may make arrangement with similar boards in the several states, insofar as practicable, whereby due credit for state and territorial licenses may be allowed in this state to the licensees of these boards who desire to secure a license to practice veterinary medicine in this state and by which licensees of the board in this state may secure credit for license issued by this board when the licensees desire to secure a license to practice in another state or territory. No arrangement may be made under this section which may lower the standard of practice of veterinary medicine in this state. The board may, if necessary, require an examination of applicants for a license from other states after a careful consideration of the credentials from these states. The board shall establish methods and procedures for investigation of applicants for a license by reciprocity.

(2) No license may be issued as a result of reciprocity between the states to an applicant unless he has been lawfully and continuously in practice as a licensed veterinarian for at least 1 year in the state from which he applies immediately preceding the date of his application for a license to practice in this state.

History: En. Sec. 8, Ch. 82, L. 1913; re-en. Sec. 3224, R.C.M. 1921; re-en. Sec. 3224, R.C.M. 1935; amd. Sec. 6, Ch. 90, L. 1955; amd. Sec. 210, Ch. 350, L. 1974; R.C.M. 1947, 66-2208(2).

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Licensing investigation and review — record access, 37-1-135.

37-18-305. License — issuance and contents. (1) The board shall, at the conclusion of a regular examination or after investigation under the reciprocity arrangements of 37-18-304 if in its judgment the applicant is qualified, authorize the department to issue a license to practice veterinary medicine.

(2) Every license granted shall be issued under seal and shall be signed by the president and secretary-treasurer of the board and shall state that the licensee has given satisfactory evidence of fitness as to age, character, veterinary medical education, and other matters required by law and that after full examination, or investigation under reciprocity arrangements, he has been found qualified to practice.

History: En. Sec. 7, Ch. 82, L. 1913; re-en. Sec. 3223, R.C.M. 1921; re-en. Sec. 3223, R.C.M. 1935; amd. Sec. 5, Ch. 90, L. 1955; amd. Sec. 209, Ch. 350, L. 1974; amd. Sec. 6, Ch. 135, L. 1975; R.C.M. 1947, 66-2207(1), (2).

37-18-306. Display of license and certificate. A person may not practice veterinary medicine in this state without possessing and displaying prominently in his principal office a license and a current and valid certificate of registration issued under this part.

History: En. Sec. 8, Ch. 82, L. 1913; re-en. Sec. 3224, R.C.M. 1921; re-en. Sec. 3224, R.C.M. 1935; amd. Sec. 6, Ch. 90, L. 1955; amd. Sec. 210, Ch. 350, L. 1974; R.C.M. 1947, 66-2208(1).

37-18-307. Renewal — fee — continuing education — automatic renewal for military personnel. (1) A person licensed to practice veterinary medicine in this state shall procure from the department before November 1 annually his certificate of registration. The certificate shall be issued by the department on the payment of a fee fixed by the board and on presentation of evidence satisfactory to the board that the licensee has complied with continuing education requirements established by the board. The board may waive, relax, or suspend continuing education requirements or particular program requirements for applicants who cannot fulfill those requirements because of individual hardship. New licensees who secure licenses by examination shall be granted a renewal the first year without attending the educational programs. The certificate is prima facie evidence of the right of the holder to practice veterinary medicine in this state during the time for which it is issued.

(2) Failure of a person licensed to procure a certificate of registration before November 1, annually, constitutes a forfeiture of the license held by the person. A person who has thus forfeited his license may have it restored to him by making written application for restoration within 1 year of the forfeiture, setting forth the reasons for failure to procure the certificate of registration at the time specified and accompanied by payment of the registration fee provided for in this section and an additional restoration fee as the board requires and by presentation of evidence satisfactory to the board that he has fulfilled all continuing education requirements to the date of application for restoration. The person making application for restoration of license within 1 year of its forfeiture is not required to submit to examination.

(3) Notwithstanding any other provisions in this chapter, a person licensed who enters or is called to active duty by a branch of the armed services of the United States is entitled to receive automatic registration of his license during the period of his duty with the armed services. However, within 1 year after release or discharge from duty in the armed services he shall procure a certificate of renewal from the department and pay the regular fee. Failure to procure the certificate of renewal within 1 year after release or discharge is the equivalent of a failure to procure a certificate of registration before November 1 of any year, and the same forfeiture and restoration requirements apply.

(4) A person licensed shall at all times have his residence and office address on file with the department.

History: En. Sec. 7, Ch. 82, L. 1913; re-en. Sec. 3223, R.C.M. 1921; re-en. Sec. 3223, R.C.M. 1935; amd. Sec. 5, Ch. 90, L. 1955; amd. Sec. 209, Ch. 350, L. 1974; amd. Sec. 6, Ch. 135, L. 1975; R.C.M. 1947, 66-2207(3) thru (5); amd. Sec. 44, Ch. 345, L. 1981; amd. Sec. 5, Ch. 43, L. 1985; amd. Sec. 4, Ch. 650, L. 1989.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-18-308. Deposit of money. Money received under this chapter shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 3, Ch. 82, L. 1913; re-en. Sec. 3219, R.C.M. 1921; re-en. Sec. 3219, R.C.M. 1935; amd. Sec. 3, Ch. 90, L. 1955; amd. Sec. 126, Ch. 147, L. 1963; amd. Sec. 27, Ch. 177, L. 1965; amd. Sec. 26, Ch. 93, L. 1969; amd. Sec. 207, Ch. 350, L. 1974; amd. Sec. 38, Ch. 439, L. 1975; amd. Sec. 3, Ch. 531, L. 1977; R.C.M. 1947, 66-2203(3); amd. Sec. 1, Ch. 277, L. 1983.

37-18-309 and 37-18-310 reserved.

37-18-311. Refusal, suspension, or revocation of license — right to notice and hearing. (1) The board may, with respect to the practice of veterinary medicine, either refuse to grant a license or a certificate of registration or suspend or revoke a license and certificate of registration on any of the following grounds:

(a) fraud or deception in procuring the license;

(b) publication or use of an untruthful or improper statement or representation with the view of deceiving the public or a client or customer in connection with the practice of veterinary medicine;

(c) conviction of a felony as shown by a certified copy of the record of the court of conviction, subject to chapter 1, part 2, of this title;

(d) habitual intemperance in the use of intoxicating liquors or habitual addiction to the use of morphine, cocaine, or other habit-forming drugs or, subject to chapter 1, part 2, of this title, conviction of a violation of a federal or state law relating to narcotic drugs;

(e) unprofessional conduct, as defined by rule of the board, manifestly disqualifying the licensee from practicing veterinary medicine;

(f) malpractice, including failure to furnish to the board on written application by it a report or information relating thereto;

(g) employment of unlicensed persons to perform work which under this chapter can lawfully be done only by persons licensed to practice veterinary medicine;

(h) fraud or dishonest conduct in applying or reporting diagnostic biological tests or in issuing health certificates;

(i) failure to keep one's premises in a clean and sanitary condition;

(j) violation of this part or of the rules or orders of the board;

(k) revocation by proper authorities for any of the above reasons of a license issued by another state.

(2) The board may not refuse to issue a license or certificate of registration or suspend or revoke a license and certificate of registration for any cause unless the person accused has been given notice and a public hearing by the board.

History: En. Sec. 10, Ch. 82, L. 1913; re-en. Sec. 3226, R.C.M. 1921; re-en. Sec. 3226, R.C.M. 1935; amd. Sec. 8, Ch. 90, L. 1955; amd. Sec. 212, Ch. 350, L. 1974; amd. Sec. 18, Ch. 101, L. 1977; R.C.M. 1947, 66-2210; amd. Sec. 5, Ch. 650, L. 1989.

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-18-312 reserved.

37-18-313. Municipal license fee prohibited. No license fee or license tax may be imposed upon a person who practices veterinary medicine, as a condition to the practice of his profession, by any municipality or other political subdivision of the state, including a local government with self-governing powers.

History: En. Sec. 7, Ch. 650, L. 1989.

Cross-References

General county licensing authority, Title 7, ch. 21, part 21.

Municipal licensing authority, Title 7, ch. 21, part 41.

Part 4

Licensing — Veterinary Technology (Repealed. Sec. 7, Ch. 96, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

37-18-401. En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(3); amd. Sec. 3, Ch. 431, L. 1979.

37-18-402. En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(4), (6).

37-18-403. En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(5); amd. Sec. 45, Ch. 345, L. 1981.

37-18-404. En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(7).

37-18-405. En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(8), (9); amd. Sec. 46, Ch. 345, L. 1981.

37-18-406 through 37-18-410 reserved.

37-18-411. En. 66-2214 by Sec. 2, Ch. 135, L. 1975; amd. Sec. 20, Ch. 101, L. 1977; R.C.M. 1947, 66-2214.

Part 5
Remedies for Violation

Part Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

37-18-501. Penalty. A person practicing veterinary medicine within this state, as defined in this chapter, without first having obtained a license to practice and being registered as required by this chapter or after his license to practice has been suspended or revoked or contrary to the provisions of this chapter in any manner is guilty of a misdemeanor for each violation of the provisions of this chapter or for each act relating to the practice of veterinary medicine in this state and upon conviction shall be punished by a fine of not less than $200 or more than $500, or by imprisonment in the county jail for not less than 30 days or more than 6 months, or by both such fine and imprisonment. Any person convicted a second time for any violation of this chapter shall be punished by both such fine and imprisonment. The district court has jurisdiction of all prosecutions brought hereunder.

History: En. Sec. 12, Ch. 82, L. 1913; re-en. Sec. 3228, R.C.M. 1921; re-en. Sec. 3228, R.C.M. 1935; amd. Sec. 10, Ch. 90, L. 1955; amd. Sec. 19, Ch. 101, L. 1977; R.C.M. 1947, 66-2212; amd. Sec. 5, Ch. 96, L. 1981.

37-18-502. Injunction. The board or any person may bring an action in the district court to enjoin any person who is not licensed from engaging in the practice of veterinary medicine unless otherwise exempted under 37-18-104(4). If the court finds that the defendant is violating or threatening to violate any provision of Title 37, chapter 18, it shall enter an order restraining him from the violation, without regard to any criminal provisions of Title 37, chapter 18.

History: En. 66-2215 by Sec. 3, Ch. 135, L. 1975; R.C.M. 1947, 66-2215; amd. Sec. 6, Ch. 96, L. 1981; amd. Sec. 6, Ch. 650, L. 1989.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Disciplinary authority of boards — injunctions, 37-1-136.

CHAPTER 19

MORTICIANS AND FUNERAL DIRECTORS

Part 1 — General

37-19-101. Definitions.

Part 2 — Board of Funeral Service

37-19-201. Organization — compensation and expenses of members.
37-19-202. Meetings — quorum — rulemaking power.

Part 3 — Licensing of Morticians and Funeral Directors

37-19-301. Funeral director's license — renewal — fee.
37-19-302. License required for practice of mortuary science — qualifications of applicants.

37-19-303. Mortician's license — application fee.
37-19-304. Issuance of intern's license — license fee — issuance of mortician's license on completion of internship.
37-19-305. Reciprocity.
37-19-306. Annual renewal of mortician's license — fee — suspension for nonrenewal.
37-19-307. Deposit of money received.
37-19-308 through 37-19-310 reserved.
37-19-311. Refusal, suspension, or revocation of mortician's or funeral director's license — fine.
37-19-312. Suspension or revocation of license — right to notice and hearing.
37-19-313 and 37-19-314 reserved.
37-19-315. Funeral costs — rules on disclosure.
37-19-316. Continuing education requirements.

Part 4 — Licensing of Mortuaries

37-19-401. License required — display of license — renewal — penalty for late renewal.
37-19-402. Operator's license requirements — facility inspections — transfer of license to new facility.
37-19-403. Power of board to set facility standards — inspection — fees.
37-19-404. Suspension, revocation of mortuary license.

Part 5 — Remedies for Violation

37-19-501. Penalty provision.

Part 6 reserved

Part 7 — Licensing of Crematoriums, Crematory Operators, and Crematory Technicians

37-19-701. Purpose.
37-19-702. Licenses required — display of licenses — renewal — penalty for late renewal.
37-19-703. Application — power of board to set standards — inspection — fees.
37-19-704. Cremation authorization required — identification.
37-19-705. Cremation procedures — cremation containers.
37-19-706. Disposition of cremated remains.
37-19-707. Limitation of liability.
37-19-708. Preneed cremation authorizations.

Chapter Cross-References

Liability for cremated remains, 35-21-304.

Cadavers and autopsies, Title 50, ch. 21.

Part 1

General

37-19-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Authorizing agent" means a person legally entitled to order the cremation of human remains. An authorizing agent is, in order of preference:

(a) a spouse;

(b) a majority of adult children;

(c) a parent;

(d) a close relative of the deceased; or

(e) in the absence of a person or persons listed in subsections (1)(a) through (1)(d), a personal representative, a public administrator, the deceased through a preneed authorization, or others as designated by board rule.

(2) "Board" means the board of funeral service provided for in 2-15-1853.

(3) "Closed container" means a container in which cremated remains can be placed and enclosed in a manner that prevents leakage or spillage of cremated remains or entrance of foreign material.

(4) "Cremated remains" means all human remains recovered after the completion of the cremation, including pulverization that leaves only bone fragments reduced to unidentifiable dimensions.

(5) "Cremation" means the technical process, using heat, that reduces human remains to bone fragments. The reduction takes place through heat and evaporation.

(6) "Cremation chamber" means the enclosed space within which the cremation process takes place. Cremation chambers of crematoriums licensed by this chapter must be used exclusively for the cremation of human remains.

(7) "Cremation container" means the container in which the human remains are placed in the cremation chamber for a cremation. A cremation container must meet substantially all of the following standards:

(a) be composed of readily combustible materials suitable for cremation;

(b) be able to be closed in order to provide a complete covering for the human remains;

(c) be resistant to leakage and spillage;

(d) be rigid enough for handling with ease; and

(e) be able to provide protection for the health, safety, and integrity of crematory personnel.

(8) "Crematory" means the building or portion of a building that houses the cremation chamber and the holding facility.

(9) "Crematory operator" means the person in charge of the licensed crematory facility.

(10) "Crematory technician" means an employee of a crematory facility who is trained to perform cremations and is licensed by the board.

(11) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(12) "Embalming" means the preservation and disinfection of the dead human body by application of chemicals, externally, internally, or both.

(13) "Funeral directing" includes:

(a) supervising funerals, including the making of preneed or at-need contractual arrangements for funerals;

(b) preparing dead bodies for burial, other than by embalming;

(c) maintaining a mortuary for the preparation, disposition, or care of dead human bodies; and

(d) representing to the public that one is a funeral director.

(14) "Holding facility" means an area within or adjacent to the crematory facility designated for the retention of human remains prior to cremation that must:

(a) comply with any applicable public health law;

(b) preserve the dignity of the human remains;

(c) recognize the health, safety, and integrity of the crematory operator and crematory personnel; and

(d) be secure from access by anyone other than authorized personnel.

(15) "Human remains" means the body of a deceased person or part of a body or limb that has been removed from a living person, including the body, part of a body, or limb in any stage of decomposition.

(16) "Mortician" means a person licensed under this chapter to practice mortuary science.

(17) "Mortuary" means a place of business used for the care and preparation for burial or transportation of dead human bodies or a place where a person represents that the person is engaged in the profession of mortuary science or funeral directing.

(18) "Mortuary science" means the profession or practice of funeral directing and embalming.

(19) "Temporary container" means a receptacle for cremated remains that is usually made of cardboard, plastic film, or similar material designed to hold the cremated remains until an urn or other permanent container is acquired.

(20) "Urn" means a receptacle designed to permanently encase the cremated remains.

History: En. Sec. 1, Ch. 41, L. 1963; amd. Sec. 260, Ch. 350, L. 1974; R.C.M. 1947, 66-2701; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 298, L. 1989; amd. Sec. 3, Ch. 38, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 38 inserted definitions of authorizing agent, closed container, cremated remains, cremation, cremation chamber, cremation container, crematory, crematory operator, crematory technician, holding facility, human remains, temporary container, and urn, in definition of Board substituted "funeral service" for "morticians", and at end of definition of funeral directing deleted "or undertaker"; and made minor changes in style. Amendment effective February 10, 1993.

Part 2

Board of Funeral Service

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1853.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-19-201. Organization — compensation and expenses of members. The board shall elect a chairman, secretary-treasurer, and other necessary officers. Board members are entitled to receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 3, Ch. 41, L. 1963; amd. Sec. 262, Ch. 350, L. 1974; amd. Sec. 42, Ch. 439, L. 1975; amd. Sec. 4, Ch. 531, L. 1977; R.C.M. 1947, 66-2703; amd. Sec. 23, Ch. 474, L. 1981.

37-19-202. Meetings — quorum — rulemaking power. The board shall hold such meetings as may be necessary. Three members constitute a quorum for the transaction of business. The board may adopt and enforce rules to carry out the purposes of this chapter.

History: En. Sec. 4, Ch. 41, L. 1963; R.C.M. 1947, 66-2704.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation for administrative purposes only, 2-15-121.

Quasi-judicial boards, 2-15-124.

Duty of Department to provide facilities, 37-1-101.

Duties of boards, 37-1-131.

Disrupting meeting as disorderly conduct, 45-8-101.

Part 3

Licensing of Morticians and Funeral Directors

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-19-301. Funeral director's license — renewal — fee. The practice of funeral directing by anyone who does not hold a funeral director's license or a mortician's license issued by the department is prohibited. A person licensed to practice funeral directing on June 1, 1963, is entitled to an annual renewal of his license on payment of a renewal fee to the department on July 1 of each year. The amount of the annual renewal license fee shall be set by the board. A funeral director's license may not be issued to a person who is not licensed by the board of embalmers and funeral directors to practice funeral directing on June 1, 1963.

History: En. Sec. 7, Ch. 41, L. 1963; amd. Sec. 264, Ch. 350, L. 1974; amd. Sec. 11, Ch. 215, L. 1975; R.C.M. 1947, 66-2707; amd. Sec. 47, Ch. 345, L. 1981.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-19-302. License required for practice of mortuary science — qualifications of applicants. (1) The practice of embalming or mortuary science by anyone who does not hold a mortician's license issued by the board is prohibited. A person 18 years of age or older wishing to practice mortuary science in this state must apply to the board on the form and in the manner prescribed by the board.

(2) To qualify for a mortician's license, a person must:

(a) be of good moral character;

(b) present evidence of having satisfactorily completed 90 quarter credits or the equivalent of study at an accredited college or university;

(c) in addition to the 90 quarter credits or the equivalent of study required in subsection (2)(b), have graduated with a diploma from an accredited college of mortuary science;

(d) pass an examination prescribed by the board; and

(e) serve a 1-year internship under the supervision of a licensed mortician in a licensed mortuary in Montana after passing the examination provided for in subsection (2)(d).

(3) A person who fails the examination required in subsection (2)(d) may retake it under conditions prescribed by rule of the board.

History: En. Sec. 8, Ch. 41, L. 1963; amd. Sec. 9, Ch. 168, L. 1971; amd. Sec. 265, Ch. 350, L. 1974; R.C.M. 1947, 66-2708; amd. Sec. 4, Ch. 378, L. 1981; amd. Sec. 1, Ch. 510, L. 1985.

Cross-References

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-19-303. Mortician's license — application fee. A person possessing the necessary qualifications may apply to the department for a license and on payment of an application fee, as set by the board, may take the examination prescribed by the board. The examination shall be held on the second Wednesday of July each year in Helena and at such other times and places as the board considers necessary.

History: En. Sec. 9, Ch. 41, L. 1963; amd. Sec. 266, Ch. 350, L. 1974; amd. Sec. 12, Ch. 215, L. 1975; R.C.M. 1947, 66-2709; amd. Sec. 48, Ch. 345, L. 1981.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-19-304. Issuance of intern's license — license fee — issuance of mortician's license on completion of internship. An applicant who passes the examination provided for in 37-19-302 shall, upon payment of a license fee prescribed by the board, be granted an intern mortician's license to practice mortuary science under the supervision of a licensed mortician in a licensed mortuary in Montana and, upon completion of 1 year's internship and payment of the annual license fee, may apply for and receive a mortician's license.

History: En. Sec. 10, Ch. 41, L. 1963; R.C.M. 1947, 66-2710; amd. Sec. 49, Ch. 345, L. 1981; amd. Sec. 2, Ch. 510, L. 1985.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-19-305. Reciprocity. If a person holding a license entitling him to practice mortuary science in another state applies for a Montana mortician's license, the board may waive the examination and internship requirements if it finds that the standards and requirements of the state in which the applicant is licensed are equal to or exceed those of Montana and if a reciprocal agreement is required by the other state, it has a reciprocal agreement with Montana.

History: En. Sec. 12, Ch. 41, L. 1963; R.C.M. 1947, 66-2712; amd. Sec. 5, Ch. 378, L. 1981.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-19-306. Annual renewal of mortician's license — fee — suspension for nonrenewal. (1) The annual license fee for a mortician's license must be postmarked before July 1 of the assessment year. The amount of the annual renewal fee shall be set by the board.

(2) Failure to pay the annual renewal fee results in automatic suspension of the license. The license may be reinstated by the payment of unpaid renewal fees plus a penalty prescribed by the board.

History: En. Sec. 11, Ch. 41, L. 1963; amd. Sec. 267, Ch. 350, L. 1974; amd. Sec. 13, Ch. 215, L. 1975; R.C.M. 1974, 66-2711; amd. Sec. 50, Ch. 345, L. 1981.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-19-307. Deposit of money received. Money collected by the department under this chapter shall be deposited for the use of the board, subject to 37-1-101(6).

History: En. Sec. 6, Ch. 41, L. 1963; amd. Sec. 263, Ch. 350, L. 1974; R.C.M. 1947, 66-2706.

37-19-308 through 37-19-310 reserved.

37-19-311. Refusal, suspension, or revocation of mortician's or funeral director's license — fine. (1) The board may refuse to grant, may suspend, or may revoke a mortician's or funeral director's license for any of the following reasons:

(a) if the applicant or licensee obtained the license by fraud or misrepresentation, either in the application for the license or in passing the examination;

(b) if the applicant or licensee has violated any section of this chapter or any rule of the state, district, or local board of health governing the disposition of dead human bodies or any rule of the board regulating the professions of mortuary science or funeral directing or the operation of a mortuary;

(c) if the licensee has participated in any scheme in the nature of a burial association or burial certificate plan:

(i) which does not properly protect the rights of the public;

(ii) where there is any element of fraud; or

(iii) where there is contained any agreement or provision that deprives heirs, next of kin, or any other authorized person freedom of choice as to the services or merchandise used in connection with a funeral or the freedom of choice as to which funeral directors or morticians shall be employed; or

(d) if the applicant or licensee violates rules adopted by the board which define unprofessional conduct on the part of applicants and licensees.

(2) The board may impose an administrative fine of not more than $1,000 per incident for any violation that could result in the suspension or revocation of a mortician's or funeral director's license. Any fine collected must be deposited in the state general fund.

History: En. Sec. 14, Ch. 41, L. 1963; R.C.M. 1947, 66-2714; amd. Sec. 6, Ch. 378, L. 1981; amd. Sec. 3, Ch. 510, L. 1985; amd. Sec. 2, Ch. 298, L. 1989.

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

37-19-312. Suspension or revocation of license — right to notice and hearing. No action to suspend, revoke, or cancel a license may be taken by the board until the accused has been given notice and a hearing on the charges. If, at the hearing, the board finds the charges true, it may revoke or suspend the license of the accused person.

History: **En. Sec. 15, Ch. 41, L. 1963; amd. Sec. 268, Ch. 350, L. 1974; R.C.M. 1947, 66-2715.**

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

37-19-313 and 37-19-314 reserved.

37-19-315. Funeral costs — rules on disclosure. The board shall adopt rules requiring mortuaries to disclose in writing to all customers a complete itemized list of all funeral costs and complete information regarding the need for embalming.

History: **En. Sec. 7, Ch. 378, L. 1981.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-19-316. Continuing education requirements. The board may establish by rule continuing education programs and continuing education requirements. Compliance with continuing education requirements may be used as a condition of continued licensure. In adopting rules and individual orders regarding continuing education, the board in its discretion:

(1) may use or rely upon guidelines and pronouncements of recognized educational and professional associations;

(2) may prescribe the content, duration, and organization of courses;

(3) shall take into account the accessibility to applicants of such continuing education as it may require; and

(4) shall avoid any impediments to interstate practice that may result from differences in continuing education requirements in other states.

History: **En. Sec. 8, Ch. 378, L. 1981.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 4

Licensing of Mortuaries

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-19-401. License required — display of license — renewal — penalty for late renewal. (1) An operating mortuary must be licensed by the board. The license must be displayed in a conspicuous place.

(2) A mortuary license expires on June 30 of each year and may be renewed upon payment of a fee set by the board.

(3) The board may set a penalty for late renewal of a mortuary license.

History: **En. Sec. 13, Ch. 41, L. 1963; R.C.M. 1947, 66-2713(part); amd. Sec. 3, Ch. 298, L. 1989.**

37-19-402. Operator's license requirements — facility inspections — transfer of license to new facility. (1) The operation of a mortuary is prohibited by anyone not holding a mortician's or funeral director's license.

(2) A license to operate a new mortuary facility in Montana may be issued only if the proposed mortuary facility meets standards for operating mortuaries adopted by the board.

(3) (a) An applicant for a license to operate a new mortuary shall send to the department a written and verified application on a form prescribed by the board. The application must be accompanied by an initial inspection fee.

(b) The department shall inspect the proposed new mortuary and report its findings to the board.

(4) The board shall grant a license if the department determines that the proposed new facility meets the standards adopted by the board and will be operated by a person who has been issued a mortician's or a funeral director's license.

(5) The board may grant a temporary license to a mortuary until the initial inspection is completed.

(6) A mortuary license may be transferred from one facility to another only when the proprietor of a licensed facility terminates services at the licensed facility and commences services at a new facility. The new facility must be inspected and must meet standards for operating mortuaries.

(7) A mortuary may be inspected by members of the board or their representatives during business hours.

History: En. Sec. 13, Ch. 41, L. 1963; R.C.M. 1947, 66-2713(4); amd. Sec. 4, Ch. 298, L. 1989.

37-19-403. Power of board to set facility standards — inspection — fees. (1) The board may adopt rules prescribing reasonable standards for operating mortuaries, including minimum requirements for drainage, ventilation, and instruments. The board may inspect the premises of a mortuary establishment to determine if rules are complied with. Inspections are at the discretion of the board and may be without notice. An initial inspection is mandatory.

(2) The board may charge the operator an inspection fee, including an initial inspection fee, to be set at the discretion of the board. Fees must be commensurate with costs.

History: En. Sec. 13, Ch. 41, L. 1963; R.C.M. 1947, 66-2713(part); amd. Sec. 51, Ch. 345, L. 1981; amd. Sec. 5, Ch. 298, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Duties of boards, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-19-404. Suspension, revocation of mortuary license. A mortuary license may be suspended or revoked upon proof of:

(1) noncompliance of board rules relating to the operation of mortuaries;

(2) violation of any of the laws or rules of the state, district, or local board of health governing the disposition of dead human bodies;

(3) violation of any rule of the board regulating the practice of mortuary science and funeral directing; or

(4) nonpayment of renewal fees.

History: En. Sec. 13, Ch. 41, L. 1963; R.C.M. 1947, 66-2713(3); amd. Sec. 6, Ch. 298, L. 1989.

Cross-References

Liability for cremated remains, 35-21-304.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Cadavers and autopsies, Title 50, ch. 21.

Part 5
Remedies for Violation

37-19-501. Penalty provision. A person who violates this chapter is guilty of a misdemeanor.

History: En. Sec. 17, Ch. 41, L. 1963; R.C.M. 1947, 66-2717.

Cross-References

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Misdemeanor penalty when none specified, 46-18-212.

Part 6 reserved

Part 7
Licensing of Crematoriums, Crematory Operators, and Crematory Technicians

Part Compiler's Comments

Effective Date: Section 25, Ch. 38, L. 1993, provided: "[This act] [37-19-701 through 37-19-708] is effective on passage and approval." Approved February 10, 1993.

37-19-701. Purpose. The legislature finds that because the practice of crematory operation affects the lives of the people of this state and because some Montanans may exercise their right to choose cremation for themselves or a loved one, it is the purpose of this part to:

(1) provide standards for the licensing and regulation of crematoriums in order to protect the public health, safety, and welfare; and

(2) ensure the qualified and professional practice of crematory operation.

History: En. Sec. 1, Ch. 38, L. 1993.

37-19-702. Licenses required — display of licenses — renewal — penalty for late renewal. (1) A person doing business in this state or a cemetery, mortuary, corporation, partnership, joint venture, voluntary organization, or other entity that erects, maintains, or provides the necessary appliances and facilities for the cremation of human remains and that conducts cremations must be licensed by the board, beginning July 1, 1993. The license must be displayed in a conspicuous place in the crematory facility.

(2) A crematory license expires on June 30 of each year and may be renewed upon payment of a fee set by the board, which includes the cost of annual inspection. If a crematory facility is attached to a licensed mortuary, only one inspection fee may be charged for inspection of both a mortuary facility under 37-19-403 and a crematory facility.

(3) The board may set a penalty fee for late renewal of a license.

(4) A person in charge of a licensed crematory facility must be licensed as a crematory operator by the board. A person employed by a licensed crematory

facility must be licensed as a crematory technician by the board. The license must be displayed in a conspicuous place in the crematory facility.

(5) Crematory operator and crematory technician licenses expire on June 30 of each year and may be renewed upon payment of a fee set by the board. On-the-job training must be provided to a crematory technician at the time of employment.

History: En. Sec. 4, Ch. 38, L. 1993.

37-19-703. Application — power of board to set standards — inspection — fees. (1) Application for a crematory, crematory operator, or crematory technician license must be on forms prescribed by the board and must include the name of the applicant, name of the crematory facility, location of the crematory facility and its mailing address, and any further information the board requires. To be eligible for licensure:

(a) as a crematory facility, an application must include a description of the type of structure and equipment to be used in the operation of the crematory facility;

(b) as a crematory operator, an applicant must be at least 18 years of age, must be a high school graduate or have an equivalent degree, and must be of good moral character.

(2) The application must be accompanied by an application fee set by the board.

(3) The board must be notified of any change of ownership of a crematory within 30 days of the change.

(4) A license to operate a crematory in Montana may be issued only upon inspection of the crematory facility and upon a finding of compliance with standards for operation set by the board.

(5) A temporary permit may be issued to operate a crematory facility, as prescribed by board rule, that is effective until the initial inspection is completed to the board's satisfaction.

(6) A crematory facility may be inspected by a board member or the board's designated representative during business hours.

(7) The board shall adopt rules governing the cremation of human remains, the transportation of human remains, sanitation, equipment, fire protection, building construction, and recordkeeping.

(8) A crematory facility shall comply with all local building codes, environmental standards, and applicable state and local regulations.

(9) A new crematory facility shall pay an initial inspection fee, set by the board, that must accompany the application.

History: En. Sec. 5, Ch. 38, L. 1993.

37-19-704. Cremation authorization required — identification. (1) Except as otherwise provided in this chapter, a crematory may not cremate human remains until it has received a cremation authorization.

(2) A crematory may not accept unidentified human remains.

(3) Appropriate identification must be placed upon the exterior of the cremation container upon receipt of the human remains.

History: En. Sec. 6, Ch. 38, L. 1993.

37-19-705. Cremation procedures — cremation containers. (1) Human remains may not be cremated except in a licensed crematory.

(2) Human remains may not be cremated within 24 hours after the time of death.

(3) A body may not be cremated with a pacemaker or other potentially hazardous implant, as defined by the board, including any toxic or explosive-type sealed implants, in place. The authorizing agent is responsible for disclosing the existence of any pacemakers or other hazardous implants.

(4) A crematory shall hold human remains, prior to their cremation, under the following conditions:

(a) In the event the crematory is unable to perform cremation upon receipt of the human remains, it shall place the human remains in a holding facility.

(b) If the human remains are not embalmed, they may not be held longer than 48 hours after the time of death outside of a refrigerated facility.

(5) Human remains delivered to a crematory may not be removed from the cremation container, and the cremation container must be cremated with the human remains.

(6) Unauthorized persons may not be permitted in the retort area while any human remains are awaiting cremation, being cremated, or being removed from the cremation chamber.

(7) The unauthorized, simultaneous cremation of human remains of more than one person within the same cremation chamber is prohibited unless the crematory has received express written authorization from all appropriate authorizing agents for the human remains to be cremated simultaneously. A written authorization exempts the crematory from liability for commingling of the product of the cremation process provided the authorization is complied with.

(8) The identification of the human remains, as indicated on the cremation container, must be verified by the crematory operator or crematory technician immediately prior to the cremation container being placed within the cremation chamber. The identification must be removed from the cremation container and be placed near the cremation chamber control panel where it must remain until the cremation process is complete.

(9) Upon completion of the cremation process, all recoverable residue must be removed from the cremation chamber. All residue of the cremation process must be separated from material other than bone fragments, which must be processed so as to reduce the bone fragments to unidentifiable particles.

(10) Cremated remains, with proper identification, must be packed and placed in a temporary container or urn ordered by the authorizing agent.

(11) If the cremated remains will not fit within the dimensions of the temporary container or urn, the remainder of the cremated remains must be returned to the authorizing agent in a separate container.

(12) If the cremated remains are to be shipped, the temporary container or designated receptacle ordered by the authorizing agent must be packed securely in a suitable, sturdy, pressure resistant, and properly sealed container.

(13) Cremated remains may be shipped only by a method that has an internal tracing system available and that provides a receipt signed by the person accepting delivery.

History: En. Sec. 7, Ch. 38, L. 1993.

37-19-706. Disposition of cremated remains. (1) The person arranging the cremation shall require the authorizing agent to provide a signed statement that specifies the ultimate disposition of the cremated remains, if known.

(2) The authorizing agent is responsible for specifying the disposition of the cremated remains. If, after a period of 90 days from the date of cremation, the authorizing agent has not specified the ultimate disposition or claimed the cremated remains, the crematory or person in possession of the cremated remains is responsible for disposition of the cremated remains and may then dispose of the cremated remains in any manner permitted by law. A record of the disposition must be made and kept by the crematory operator. This subsection applies to all cremated remains in the possession of a crematory or other party.

(3) Except with the express written consent of the authorizing agent, a person may not:

(a) dispose of or scatter cremated remains in a manner or in a location that commingles the cremated remains with those of another person. The provisions of this subsection (3) do not apply to the scattering of cremated remains from individual containers over public waterways or by air or to the scattering of cremated remains in an area located in a dedicated cemetery and used exclusively for that purpose.

(b) place cremated remains of more than one person in the same closed container.

(4) Cremated remains must be delivered to the individual specified by the authorizing agent on the cremation authorization form.

(5) A representative of the crematory and the individual receiving the cremated remains shall sign a receipt indicating the name of the deceased and the date, time, and place of the delivery. The crematory shall retain a copy of the receipt, and the original must be given to the authorizing agent. After this delivery, the cremated remains may be transported, in this state, without a permit and disposed of in accordance with this chapter.

History: En. Sec. 8, Ch. 38, L. 1993.

37-19-707. Limitation of liability. (1) A person signing a cremation authorization form shall warrant the truthfulness of any facts set forth in the form, including the identity of the deceased whose remains are to be cremated and the signer's authority to order cremation.

(2) A crematory, crematory operator, or crematory technician who properly cremates human remains, refuses to accept a body or perform a cremation, or refuses to release cremated remains due to an unresolved dispute is presumed to have acted properly and without negligence if the actions were performed in accordance with Title 37, chapter 19.

History: En. Sec. 9, Ch. 38, L. 1993.

37-19-708. Preneed cremation authorizations. (1) Preneed cremation authorizations may be made with a cemetery, funeral establishment, crematory, or any other party. Preneed authorizations must specify the ultimate disposition of the cremated remains, be signed by the authorizing agent, and meet other requirements established by board rule.

(2) A crematory operator or crematory technician shall comply with the terms of the preneed authorization in releasing or disposing of the cremated remains at the time of death.

(3) Upon payment for cremation and disposition, a crematory, crematory operator, or crematory technician in possession of a cremation authorization form and the deceased's human remains is not liable for the actual cremation and the disposition of the cremated remains if the terms of the preneed authorization have been complied with.

History: En. Sec. 10, Ch. 38, L. 1993.

CHAPTER 20

PHYSICIAN ASSISTANTS-CERTIFIED

Part 1 — General

37-20-101. Qualifications of supervising physician and physician assistant-certified.
37-20-102. Repealed.
37-20-103. Limitations on authority conferred — exception.
37-20-104. Title and practice.

Part 2 — Board of Medical Examiners

37-20-201. Duties of board of medical examiners — compensation and expenses of members.
37-20-202. Adoption of rules.
37-20-203. Licensing of physician assistants-certified.

Part 3 — Utilization Plans

37-20-301. Utilization plan required — contents — approval.
37-20-302. Utilization plan approval fee — renewal of license — renewal fee.
37-20-303. Exemptions from approval requirement.

Part 4 — Regulation of Practice

37-20-401. Definitions.
37-20-402. Criteria for licensing a physician assistant-certified.
37-20-403. Physician assistant-certified as agent of supervising physician.
37-20-404. Prescribing and dispensing authority — discretion of supervising physician on limitation of authority.
37-20-405. Billing.
37-20-406. Liaison to board.
37-20-407 and 37-20-408 reserved.
37-20-409. Disciplinary action.

Chapter Cross-References

Limits on liability for emergency care rendered at scene of accident or emergency, 27-1-714.

General provisions relating to health care practitioners, Title 37, ch. 2.

Report of fetal death that occurs outside licensed medical facility, 46-4-114.

Emergency medical services, Title 50, ch. 6.

Health care information, Title 50, ch. 16.

Part 1
General

Part Cross-References

Duty of physician's assistant to report violations of Montana Elder Abuse Prevention Act, 52-3-811.

37-20-101. Qualifications of supervising physician and physician assistant-certified. (1) Each supervising physician named in the utilization plan required by 37-20-301 shall:

(a) possess a current, unrestricted license to practice medicine in this state;

(b) submit a statement to the Montana state board of medical examiners that, in his opinion, the physician assistant-certified to be employed is of good character and is both mentally and physically able to perform the duties of a physician assistant-certified described in the utilization plan;

(c) submit a statement to the board that he will exercise supervision over the physician assistant-certified in accordance with any rules adopted by the board and will retain professional and legal responsibility for the care and treatment of his patients; and

(d) submit detailed information to the board regarding the physician's professional background, medical education, internship and residency, continuing education received, membership in state and national medical associations, hospital and staff privileges, and such other information as the board may require.

(2) Each physician assistant-certified named in the utilization plan required by 37-20-301 shall meet the criteria for approval as a physician assistant-certified as provided in 37-20-402.

History: En. Sec. 3, Ch. 380, L. 1981; amd. Sec. 9, Ch. 97, L. 1989.

Cross-References

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Licensing of physicians, Title 37, ch. 3, part 3.

Unsworn falsification to authorities, 45-7-203.

Nondiscrimination in licensing, 49-3-204.

37-20-102. Repealed. Sec. 16, Ch. 419, L. 1993.

History: En. Sec. 8, Ch. 380, L. 1981; amd. Sec. 10, Ch. 97, L. 1989.

37-20-103. Limitations on authority conferred — exception. Except as provided in 37-10-102, nothing in this chapter may be construed to authorize a physician assistant-certified to perform those functions and duties specifically delegated by law to persons licensed as optometrists as defined under Title 37, chapter 10.

History: En. Sec. 10, Ch. 380, L. 1981; amd. Sec. 11, Ch. 97, L. 1989.

37-20-104. Title and practice. (1) A person who employs a physician assistant-certified or holds out to the public that the person is a physician assistant-certified without the approval of the Montana state board of medical examiners is guilty of a misdemeanor and is punishable as provided in 46-18-212.

(2) Prior to being issued a license and receiving approval of a utilization plan, a physician assistant-certified may not engage in the practice of medicine in this state, even under the supervision of a licensed physician.

(3) The board may enforce the provisions of this section by the remedy of injunction.

History: En. Sec. 5, Ch. 380, L. 1981; amd. Sec. 12, Ch. 97, L. 1989; amd. Sec. 1, Ch. 446, L. 1991; amd. Sec. 7, Ch. 419, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 419 substituted (2) regarding restriction on practice of medicine for former (2) and (3) authorizing Board to take certain disciplinary action (see 1993 Session Law for text); and made minor changes in style. Amendment effective April 20, 1993.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Part 2

Board of Medical Examiners

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1841.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

Board of Medical Examiners, Title 37, ch. 3, part 2.

37-20-201. Duties of board of medical examiners — compensation and expenses of members. The Montana state board of medical examiners provided for in 2-15-1841 shall administer the provisions of this chapter under such procedure as it considers advisable and may adopt reasonable rules to carry out the provisions of this chapter. Each member of the board shall receive the compensation and travel expenses provided for in 37-3-206 while engaged in the active and necessary discharge of his duties under this chapter.

History: En. Sec. 1, Ch. 380, L. 1981.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation for administrative purposes only, 2-15-121.

Quasi-judicial boards, 2-15-124.

Duties of boards, 37-1-131.

37-20-202. Adoption of rules. The board of medical examiners shall adopt administrative rules to implement the provisions of this chapter that:

(1) address the issues of supervision and direction limitations and requirements;

(2) address the issue of protocols for interaction of medical personnel with differing responsibilities;

(3) specify that a physician may not utilize more than one physician assistant-certified unless the physician is able to demonstrate to the board the ability to supervise more than one assistant adequately;

(4) address other considerations pertinent to the approval of physician assistant-certified utilization plans and locum tenens utilization plans, and the health care needs of the public;

(5) address physician assistant training in Montana; and

(6) set forth grounds for disciplinary action.

History: En. Sec. 9, Ch. 380, L. 1981; amd. Sec. 13, Ch. 97, L. 1989; amd. Sec. 3, Ch. 446, L. 1991; amd. Sec. 9, Ch. 419, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 419 inserted (6) requiring Board to adopt rules containing grounds for disciplinary action; and made minor changes in style. Amendment effective April 20, 1993.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Duty of boards to adopt rules on conduct, 37-1-121.

37-20-203. Licensing of physician assistants-certified. The Montana state board of medical examiners may issue the following two forms of physician assistants-certified licenses under its seal:

(1) a permanent license, signed by the president and subject to annual renewal; and

(2) a temporary license, signed by any member of the board and subject to specifications and limitations imposed by the board.

History: En. Sec. 10, Ch. 419, L. 1993.

Compiler's Comments

Effective Date: Section 18, Ch. 419, L. 1993, provided: "[This act] is effective on passage and approval." Approved April 20, 1993.

Part 3
Utilization Plans

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-20-301. Utilization plan required — contents — approval. (1) A physician, office, firm, state institution, or professional service corporation may not employ or make use of the services of a physician assistant-certified in the practice of medicine, as defined in 37-3-102, and a physician assistant-certified may not be employed or practice as a physician assistant-certified unless the physician assistant-certified:

(a) is supervised by a licensed physician;

(b) is licensed by the Montana state board of medical examiners; and

(c) has received board approval of a physician assistant-certified utilization plan.

(2) A physician assistant-certified utilization plan must set forth in detail the following information:

(a) the name and qualifications of the supervising physician, as provided in 37-20-101, and the name and license number of the physician assistant-certified;

(b) the nature and location of the physician's medical practice;

(c) the scope of practice of the physician assistant-certified and the locations where the physician assistant-certified will practice;

(d) the name and qualifications of a second physician meeting the requirements of 37-20-101 to act as an alternate supervising physician in the absence of the primary supervising physician;

(e) necessary guidelines describing the intended availability of the supervising or alternate physician for consultation by the physician assistant-certified; and

(f) other information the board may consider necessary.

(3) The board shall approve the utilization plan if it finds that the practice of the physician assistant-certified is:

(a) assigned by the supervising physician;

(b) within the scope of the training, knowledge, experience, and practice of the supervisory physician; and

(c) within the scope of the training, knowledge, education, and experience of the physician assistant-certified.

(4) A supervising physician and a physician assistant-certified may submit a new or additional utilization plan to the board for approval without reestablishing the criteria set out in 37-20-402, so long as the information requirements of subsection (2) have been met and the appropriate fee provided for in 37-20-302(1) has been paid.

(5) A utilization plan may provide that a physician assistant-certified be allowed to furnish services on a locum tenens basis at a location other than the physician assistant-certified's primary place of practice. A locum tenens utilization plan may be approved by a single board member.

History: En. Sec. 2, Ch. 380, L. 1981; amd. Sec. 14, Ch. 97, L. 1989; amd. Sec. 2, Ch. 446, L. 1991; amd. Sec. 11, Ch. 419, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 419 in (1)(b), at beginning, substituted "is licensed" for "has been approved"; in (2)(a) substituted "license" for "approval"; in (2)(c), at beginning, substituted "scope of practice of" for "duties to be delegated to" and at end substituted "locations where the physician assistant-certified will practice" for "location in which those duties are to be performed"; in (2)(d), after "37-20-101 to", substituted "act as an alternate" for "serve in the place of" and at end substituted "absence of the primary supervising physician" for "event that the supervising physician is unable to supervise the physician assistant-certified temporarily"; in (3) substituted "practice of" for "duties to be delegated to"; and made minor changes in style. Amendment effective April 20, 1993.

Cross-References

Professional service corporations, Title 35, ch. 4.

37-20-302. Utilization plan approval fee — renewal of license — renewal fee. (1) A utilization plan approval fee must be paid in an amount set by the board. Payment must be made when the utilization plan is submitted to the board and is not refundable.

(2) A locum tenens utilization plan approval fee must be paid in an amount set by the board.

(3) A license issued under this part must be renewed annually, on a date set by the board.

(4) A license renewal fee set by the board must be paid at the time the license is renewed.

(5) The department shall mail a renewal notice no later than 60 days prior to the renewal date set by the board under subsection (3). A certified letter

addressed to the delinquent licensee's last-known address as it appears on the records of the department constitutes notice of intent to revoke the license.

(6) If the annual renewal fee is not paid on or before the renewal date set by the board under subsection (3), the board may revoke the license after giving 30 days' notice to the licensee. A license may not be revoked for nonpayment of a renewal fee if the licensee pays the annual renewal fee plus a penalty prescribed by the board on or before the date fixed for revocation.

(7) Fees received by the department must be deposited in the state special revenue fund for use by the board in the administration of this chapter, subject to 37-1-101(6).

History: En. Sec. 4, Ch. 380, L. 1981; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 15, Ch. 97, L. 1989; amd. Sec. 5, Ch. 540, L. 1991; amd. Sec. 12, Ch. 419, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 419 throughout section substituted references to license for references to certificate and references to licensee for references to certificate holder; in (1), at beginning, deleted "Every physician, office, firm, or professional service corporation proposing to employ a physician assistant-certified shall pay to the board" and after "fee" inserted "must be paid"; and substituted (2) requiring a locum tenens utilization plan approval fee for "Every physician, office, firm, or professional service corporation proposing to employ a physician assistant-certified on a locum tenens basis shall pay to the board a locum tenens utilization plan fee in an amount set by the board." Amendment effective April 20, 1993.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Professional service corporations, Title 35, ch. 4.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-20-303. Exemptions from approval requirement. This chapter does not require the approval of a physician assistant-certified utilization plan or locum tenens utilization plan with respect to any acts within the professional competence of a person licensed under the provisions of Title 37, chapters 3 through 17, 31, or 32.

History: En. Sec. 6, Ch. 380, L. 1981; amd. Sec. 16, Ch. 97, L. 1989.

Part 4
Regulation of Practice

Part Cross-References

Coverage required for services provided by physician assistants-certified, 33-22-114.

37-20-401. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the Montana state board of medical examiners established in 2-15-1841.

(2) "Locum tenens" means the temporary provision of services within the scope of practice of a physician assistant-certified.

(3) "Physician assistant-certified" means a member of a health care team, approved by the board, who provides medical services that may include examination, diagnosis, prescription of medications, and treatment, as approved by the board, under the supervision of a physician licensed by the board.

(4) "Protocol" means the proper relationship between a physician assistant-certified and other health care practitioners and the manner of their interaction.

History: En. Sec. 1, Ch. 97, L. 1989.

37-20-402. Criteria for licensing a physician assistant-certified. A person may not be licensed as a physician assistant-certified in this state unless the person:

(1) is of good moral character;

(2) is a graduate of a physician assistant training program approved by the American medical association's committee on allied health education and accreditation;

(3) has taken and successfully passed an examination recognized by the national commission on the certification of physician assistants;

(4) holds a current certificate from the national commission on the certification of physician assistants; and

(5) has submitted to the board detailed information on the person's history, education, and experience.

History: En. Sec. 2, Ch. 97, L. 1989; amd. Sec. 13, Ch. 419, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 419 in introductory clause, near beginning, substituted "licensed" for "approved"; and made minor changes in style. Amendment effective April 20, 1993.

37-20-403. Physician assistant-certified as agent of supervising physician. (1) In establishing protocol, a physician assistant-certified must be considered the agent of the supervising physician with regard to all duties delegated to the physician assistant-certified under the utilization plan. A health care provider shall consider the instructions of a physician assistant-certified as being the instructions of the supervising physician as long as the instructions concern the duties delegated to the physician assistant-certified under the utilization plan.

(2) The supervising physician and the physician assistant-certified are responsible for making available a copy of the approved utilization plan to all other health care practitioners with whom they reasonably believe they will interact on a regular basis.

(3) Nothing in this chapter may be construed to conflict with the provisions of 37-3-322.

History: En. Sec. 3, Ch. 97, L. 1989.

37-20-404. Prescribing and dispensing authority — discretion of supervising physician on limitation of authority. (1) A physician assistant-certified may prescribe, dispense, and administer drugs to the extent authorized by the board by rule, by the utilization plan, or both. The prescribing, dispensing, and administration of drugs are also subject to the authority of the supervising physician, and the supervising physician may impose additional limitations on the prescribing and dispensing authority granted by the board.

(2) All dispensing activities allowed by this section must comply with 37-2-104 and with packaging and labeling guidelines developed by the board of pharmacy under Title 37, chapter 7.

(3) The prescribing and dispensing authority granted a physician assistant-certified may include the following:

(a) Prescribing, dispensing, and administration of Schedule III drugs listed in 50-32-226, Schedule IV drugs listed in 50-32-229, and Schedule V drugs listed in 50-32-232, is authorized.

(b) Prescribing, dispensing, and administration of Schedule II drugs listed in 50-32-224 may be authorized for limited periods not to exceed 72 hours.

(c) Records on the dispensing and administration of scheduled drugs must be kept.

(d) A physician assistant-certified shall maintain registration with the federal drug enforcement administration.

(e) Prescriptions written by physician assistants-certified must comply with regulations relating to prescription requirements adopted by the board of pharmacy.

(f) The board shall adopt rules regarding the refilling of prescriptions written by physician assistants-certified.

History: En. Sec. 4, Ch. 97, L. 1989; amd. Sec. 14, Ch. 419, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 419 in (3)(b) increased prescribing, dispensing, and administration authority of physician assistant-certified from 48 hours to 72 hours; deleted former (3)(e) that read: "(e) Drugs dispensed by a physician assistant-certified must be prepackaged by a licensed pharmacist, except that samples provided by a pharmaceutical company representative may be dispensed"; and made minor changes in style. Amendment effective April 20, 1993.

37-20-405. Billing. A supervising physician, office, firm, institution, or other entity may bill for physician assistant-certified services.

History: En. Sec. 5, Ch. 97, L. 1989; amd. Sec. 15, Ch. 419, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 419 after "physician" inserted "office, firm", after "institution" inserted "or other entity", and deleted "where services are delivered"; and made minor changes in style. Amendment effective April 20, 1993.

37-20-406. Liaison to board. The Montana academy of physician assistants shall elect one person to serve as a nonvoting liaison to the board to represent the interests of physician assistants.

History: En. Sec. 6, Ch. 97, L. 1989.

37-20-407 and 37-20-408 reserved.

37-20-409. Disciplinary action. (1) The Montana state board of medical examiners may, after notice and opportunity for hearing, discipline a supervising physician or physician assistant-certified who:

(a) acts in violation of this section;

(b) obtains approval of the board by fraud;

(c) acts in a manner contrary to the terms of a utilization plan; or

(d) violates any of the applicable provisions of this chapter or rules of the board adopted under this chapter.

(2) If the board finds that the supervising physician or the physician assistant-certified has violated any provision specified in subsection (1), the board may:

(a) revoke the person's license or approval;

(b) suspend the person's right to practice for a period not exceeding 1 year;

(c) suspend its judgment of revocation on terms and conditions determined by the board;

(d) place the person on probation;

(e) impose a fine, not to exceed $500 for each violation; or

(f) take other action it considers proper.

History: En. Sec. 8, Ch. 419, L. 1993.

Compiler's Comments

Effective Date: Section 18, Ch. 419, L. 1993, provided: "[This act] is effective on passage and approval." Approved April 20, 1993.

CHAPTER 21

DIETITIANS

Part 1 — General

37-21-101. Definitions.

Part 2 — Department of Health and Environmental Sciences

37-21-201. Rules.

Part 3 — Qualifications

37-21-301. Dietitian — qualifications.
37-21-302. Registered dietitian — qualifications.

Part 4 — Remedies—Penalty

37-21-401 through 37-21-404 reserved.
37-21-405. Remedies cumulative.
37-21-406. Violation — penalty.

Part 1

General

37-21-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Authorized agency" means a private agency or institution authorized by the department to establish academic, experience, and training qualifications for dietitians.

(2) "Department" means the department of health and environmental sciences as provided in 2-15-2101.

History: En. Sec. 1, Ch. 427, L. 1983.

Part 2

Department of Health and Environmental Sciences

37-21-201. Rules. The department may adopt rules in accordance with the Montana Administrative Procedure Act to implement this chapter. The rules may adopt standards, consistent with this chapter, promulgated by an authorized agency relating to academic, experience, and training requirements.

History: En. Sec. 4, Ch. 427, L. 1983.

Cross-References

Administrative Procedure Act, Title 2, ch. 4.

Part 3
Qualifications

37-21-301. Dietitian — qualifications. No person may use, in connection with his name or place of business, the term "dietitian" or represent in any way that he is a dietitian unless he:

(1) has been granted, prior to October 1, 1983, the right to use the term "dietitian" by an authorized agency; or

(2) (a) is 18 years of age or older;

(b) has satisfactorily completed appropriate academic requirements for the field of dietetics and related disciplines;

(c) has received a baccalaureate or higher degree in dietetics or a related field from a college or university accredited by the Northwestern association of schools and colleges; and

(d) has satisfactorily completed a program of supervised clinical experience of not less than 6 months in length that is designed to train entry-level dietitians through instruction and assignments in a clinical setting. The program must meet minimum requirements established by the department.

History: En. Sec. 2, Ch. 427, L. 1983.

Cross-References

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-21-302. Registered dietitian — qualifications. No person may use, in connection with his name or place of business, the term "registered dietitian" or represent in any way that he is a registered dietitian unless he:

(1) has been granted, prior to October 1, 1983, the right to use the term "registered dietitian" by an authorized agency; or

(2) (a) has fulfilled all the requirements set forth in 37-21-301(2);

(b) has satisfactorily completed an examination for registered dietitians administered by an authorized agency; and

(c) has satisfactorily completed, from time to time, such continuing education requirements as may be established by an authorized agency.

History: En. Sec. 3, Ch. 427, L. 1983.

Part 4
Remedies — Penalty

37-21-401 through 37-21-404 reserved.

37-21-405. Remedies cumulative. Remedies provided under this chapter are in addition to any other civil or criminal remedy provided by law.

History: En. Sec. 6, Ch. 427, L. 1983.

37-21-406. Violation — penalty. A person who violates this chapter or rules adopted under this chapter is guilty of a misdemeanor and is punishable by a fine not to exceed $500.

History: En. Sec. 5, Ch. 427, L. 1983.

CHAPTER 22

SOCIAL WORK

Part 1 — General

37-22-101. Purpose.
37-22-102. Definitions.

Part 2 — Board of Social Work Examiners and Professional Counselors

37-22-201. Duties of board.

Part 3 — Licensing

37-22-301. License requirements — exemptions.
37-22-302. Fees.
37-22-303. Issuance, effective date, and display of license.
37-22-304. Renewal of license.
37-22-305. Representation to public as licensed clinical social worker — limitations on use of title — limitations on practice.
37-22-306. Inactive status.
37-22-307 through 37-22-310 reserved.
37-22-311. Grounds for revocation, suspension, or refusal to renew license.
37-22-312. Procedure for charging violation.

Part 4 — Regulation

37-22-401. Privileged communications — exceptions.
37-22-402 through 37-22-410 reserved.
37-22-411. Violations — penalties.

Chapter Cross-References

Disability insurance — freedom of choice of practitioners, 33-22-111.

Part 1

General

37-22-101. Purpose. The legislature finds and declares that because the profession of social work profoundly affects the lives of people of this state it is the purpose of this chapter to provide for the common good by insuring ethical, qualified, and professional practice of social work. This chapter and the rules promulgated under 37-22-201 set standards of qualification, education, training, and experience and will establish professional ethics for those who seek to engage in the practice of social work as licensed social workers.

History: En. Sec. 2, Ch. 544, L. 1983.

37-22-102. Definitions. As used in this chapter:

(1) "Board" means the board of social work examiners and professional counselors established under 2-15-1854.

(2) "Department" means the department of commerce.

(3) "Licensee" means a person licensed under this chapter.

(4) "Psychotherapy" means the use of psychosocial methods within a professional relationship to assist a person to achieve a better psychosocial adaptation and to modify internal and external conditions that affect individuals, groups, or families in respect to behavior, emotions, and thinking concerning their interpersonal processes.

(5) "Social work" means the professional practice directed toward helping people achieve more adequate, satisfying, and productive social adjustments. The practice of social work involves special knowledge of social resources, human capabilities, and the roles that individual motivation and social influences play in determining behavior and involves the application of social work techniques, including:

(a) counseling and using psychotherapy with individuals, families, or groups;

(b) providing information and referral services;

(c) providing, arranging, or supervising the provision of social services;

(d) explaining and interpreting the psychosocial aspects in the situations of individuals, families, or groups;

(e) helping communities to organize to provide or improve social and health services; and

(f) research or teaching related to social work.

History: En. Sec. 3, Ch. 544, L. 1983; amd. Sec. 18, Ch. 572, L. 1985.

Cross-References

Professional counseling, Title 37, ch. 23.

Part 2

Board of Social Work Examiners and Professional Counselors

37-22-201. Duties of board. The board shall:

(1) subject to 37-1-101, examine qualified applicants, issue licenses to qualified applicants that meet the requirements of this chapter, and renew licenses under the provisions of this chapter;

(2) recommend prosecutions for violations of 37-22-411 to the attorney general or the appropriate county attorney, or both;

(3) annually publish a list of the names and addresses of all persons who are licensed social workers;

(4) establish requirements for continuing education that are a condition of license renewal;

(5) meet at least once every 3 months to perform the duties described in this section. The board may, once a year by a consensus of its members, determine that there is no necessity for a board meeting.

(6) distribute a copy of the ethical standards to the certified masters of social work; and

(7) adopt rules that set professional, practice, and ethical standards for licensed masters of social work and such other rules as may be reasonably necessary for the administration of this chapter.

History: En. Sec. 4, Ch. 544, L. 1983.

Cross-References

Duties of boards, 37-1-131.

Disciplinary authority of boards — injunctions, 37-1-136.

Part 3
Licensing

37-22-301. License requirements — exemptions. (1) A license applicant shall satisfactorily complete an examination prepared and administered by the board.

(2) Before an applicant may take the examination, the applicant shall present three letters of reference from licensed social workers, licensed clinical social workers, psychiatrists, or psychologists who have knowledge of the applicant's professional performance and shall demonstrate to the board that the applicant:

(a) has a doctorate or master's degree in social work from a program accredited by the council on social work education or approved by the board;

(b) has completed at least 24 months of supervised post master's degree work experience in psychotherapy, which included 3,000 hours of social work experience, of which at least 1,500 hours were in direct client contact, within the past 5 years; and

(c) abides by the social work ethical standards adopted under 37-22-201.

(3) An applicant who submits an application for licensure before October 1, 1994, may acquire the supervised experience required by subsection (2)(b) in less than 24 months.

(4) An applicant who has failed the examination may reapply to take the examination.

(5) An applicant is exempt from the examination requirement if the applicant satisfies the board that the applicant is licensed, certified, or registered under the laws of a state or territory of the United States that imposes substantially the same requirements as this chapter and that the applicant has passed an examination similar to that required by the board.

History: En. Sec. 6, Ch. 544, L. 1983; amd. Sec. 1, Ch. 78, L. 1987; amd. Sec. 1, Ch. 552, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 552 at end of (1) deleted "except that during the 365-day period following the effective date of this chapter a license must be granted without examination if the requirements of subsection (2) are met"; in (2), after "reference from", inserted "licensed", after "social workers" inserted "licensed clinical social workers", and after "psychologists" deleted "or psychiatric nurses"; at beginning of (2)(b), after "has", substituted "completed at least 24 months of supervised post master's degree work experience in psychotherapy, which included 3,000 hours of social work experience, of which at least 1,500 hours were in direct client contact" for "accumulated 3,000 hours of postdegree work experience in psychotherapy"; inserted (3) that read: "(3) An applicant who submits an application for licensure before October 1, 1994, may acquire the supervised experience required by subsection (2)(b) in less than 24 months"; and made minor changes in style.

Applicability: Section 12(1), Ch. 552, L. 1993, provided that subsection (2)(b) of this section applies to persons licensed on or after October 1, 1994.

Cross-References

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-22-302. Fees. (1) Each applicant for a license shall, upon submitting his application to the board, pay an application fee set by the board equal to the cost of processing the application.

(2) Each applicant for a license required to take an examination shall, prior to commencement of the examination, pay an examination fee set by the board equal to the cost of administering the examination.

(3) Each applicant shall, prior to receipt of a license or license renewal, pay a fee set by the board equal to the cost of issuing a license.

(4) Subject to 37-1-101(6), money paid for application, examination, license, and license renewal fees must be deposited in the state special revenue fund for the use of the board.

History: En. Sec. 7, Ch. 544, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-22-303. Issuance, effective date, and display of license. (1) Upon successful completion of the examination required by 37-22-301 or upon demonstration by a person that he is exempt from examination and has otherwise fulfilled the requirements of 37-22-301, the applicant must be issued a license attesting to the date and fact of licensure. The license is effective on the date of issuance and expires December 31 of each year.

(2) The license must be displayed in the registrant's place of business or employment.

History: En. Sec. 8, Ch. 544, L. 1983; amd. Sec. 2, Ch. 78, L. 1987.

37-22-304. Renewal of license. (1) An application for renewal of an existing license made within 60 days after the expiration of the license is timely, and the rights and privileges of the applicant during that period remain in effect.

(2) Application for renewal must be made upon a form provided by the department. A renewal license must be issued upon payment of a renewal fee set by the board and upon submitting proof of completion of continuing education requirements.

(3) An individual may renew a license in the manner provided in subsection (2) within 1 year of the expiration date of the license. An applicant for renewal shall provide the board with proof that the applicant has satisfied the continuing education requirements of the board for the year for which the license is to be renewed.

(4) The renewal fee is increased by 10% for each month or part of a month that the renewal is delayed after the 60-day period provided in subsection (1). The maximum fee for delayed renewal may not exceed twice the normal renewal fee.

(5) A license not renewed within 1 year following its expiration date terminates automatically.

History: En. Sec. 9, Ch. 544, L. 1983; amd. Sec. 2, Ch. 552, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 552 inserted (3) allowing renewal within 1 year of expiration; inserted (4) allowing a monthly renewal fee increase; and inserted (5) providing that a license expires if not renewed within 1 year after expiration.

37-22-305. Representation to public as licensed clinical social worker — limitations on use of title — limitations on practice. (1) Upon issuance of a license in accordance with this chapter, a licensee may use the title "licensed clinical social worker". Except as provided in subsection (2), a person may not represent that the person is a licensed clinical social worker by adding the letters "LSW" or "LCSW" after the person's name or by any other means unless licensed under this chapter.

(2) Individuals licensed in accordance with this chapter before October 1, 1993, who use the title "licensed social worker" or "LSW" may use the title "licensed clinical social worker" or "LCSW".

(3) Subsection (1) does not prohibit:

(a) qualified members of other professions, such as physicians, psychologists, lawyers, pastoral counselors, educators, or the general public engaged in social work like activities, from doing social work consistent with their training if they do not hold themselves out to the public by a title or description incorporating the words "licensed social worker" or "licensed clinical social worker";

(b) activities, services, and use of an official title by a person in the employ of or under a contract with a federal, state, county, or municipal agency, an educational, research, or charitable institution, or a health care facility licensed under the provisions of Title 50, chapter 5, that are a part of the duties of the office or position;

(c) an employer from performing social work like activities performed solely for the benefit of employees;

(d) activities and services of a student, intern, or resident in social work pursuing a course of study at an accredited university or college or working in a generally recognized training center if the activities and services constitute a part of the supervised course of study;

(e) activities and services by a person who is not a resident of this state that are rendered for a period that does not exceed, in the aggregate, 60 days during a calendar year if the person is authorized under the law of the state or country of residence to perform the activities and services. However, the person shall report to the department the nature and extent of the activities and services if they exceed 10 days in a calendar year.

(f) pending disposition of the application for a license, activities and services by a person who has recently become a resident of this state, has applied for a license within 90 days of taking up residency in this state, and is licensed to perform the activities and services in the state of former residence.

History: En. Sec. 5, Ch. 544, L. 1983; amd. Sec. 3, Ch. 552, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 552 inserted first sentence of (1) that read: "Upon issuance of a license in accordance with this chapter, a licensee may use the title "licensed clinical social worker"" and at beginning of second sentence inserted exception clause, near middle, after "licensed", inserted "clinical", and after ""LSW"" inserted "or "LCSW""; inserted (2) allowing certain licensees to use the title of licensed clinical social worker; at end of (3)(a), after "licensed", inserted "clinical"; near beginning of (3)(b), after "employ of", inserted "or under a contract with" and after "institution" inserted "or a health care facility licensed under the provisions of Title 50, chapter 5"; and made minor changes in style.

37-22-306. Inactive status. (1) The board shall reclassify, for a maximum of 2 consecutive years, an active license to an inactive license for a licensee who furnishes satisfactory evidence that the licensee has discontinued the practice of social work within this state and has satisfied the continuing education requirements of the board for each year of inactive licensure.

(2) An individual with an inactive status license who wishes to convert the license to active status shall make application for conversion in the manner prescribed by the board. The application must be accompanied by a renewal fee prescribed by the board. If the applicant for conversion to active status has held an inactive status license for more than 1 year, the applicant shall submit with the application satisfactory evidence that the applicant has earned the number of continuing education credits prescribed by the board for each year that the applicant has held an inactive status license.

(3) An individual on inactive status for more than 2 consecutive years shall comply with the requirements of 37-22-301 in order to convert an inactive status license to an active status license.

(4) An inactive status licensee may not practice social work in this state.

History: En. Sec. 7, Ch. 552, L. 1993.

37-22-307 through 37-22-310 reserved.

37-22-311. Grounds for revocation, suspension, or refusal to renew license. The board may reprimand a licensee or revoke, suspend, or refuse to renew the license of a licensee found to have committed:

(1) fraud or deceit in obtaining a license or license renewal;

(2) gross negligence, incompetency, or misconduct in the practice of social work as a licensed social worker;

(3) a felony;

(4) a violation of the rules for licensed social workers adopted by the board;

(5) a misdemeanor under 37-22-411; or

(6) any of the following unprofessional acts:

(a) misrepresentation of the type or status of his license;

(b) intentionally or recklessly causing physical or emotional harm to a client;

(c) misrepresentation of his professional qualifications, affiliations, or purposes;

(d) sexual relations with a client, solicitation of sexual relations with a client, sexual misconduct, or a sex offense if such act, offense, or solicitation is substantially related to the qualifications, functions, or duties of the licensee;

(e) performance of or representation of his ability to perform professional services beyond his field or fields of competence, as established by his education, training, and experience;

(f) failure to maintain the confidentiality, except as otherwise required or permitted by law, of all information received from a client during the course of treatment and all information about the client obtained from tests or other means;

(g) prior to the commencement of treatment, failure to disclose to a client or prospective client the fee to be charged for professional services or the basis upon which such fee will be computed; or

(h) advertising in a manner that is false or misleading.

History: En. Sec. 10, Ch. 544, L. 1983.

Cross-References

Reporting disciplinary actions against licensees, 37-1-105.

Duties of Director, 37-1-121.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-22-312. Procedure for charging violation. (1) Any member of the board or other person may charge a licensee with a violation of 37-22-311. The charge must be made by affidavit and subscribed and sworn to by the person making it and filed with the department. The charge must be investigated by the board and, unless the board dismisses the charge after investigation as unfounded or trivial, the board shall act on the charge.

(2) Any hearing on the charge must be conducted in accordance with 37-1-121(1) and the Montana Administrative Procedure Act.

History: En. Sec. 11, Ch. 544, L. 1983; amd. Sec. 4, Ch. 552, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 552 at end of (1), after "charge", deleted "within 6 months after the date on which the charge was filed. The board is considered to have acted on a charge if it has given notice by mail to the licensee of its intent to reprimand him or revoke, suspend, or refuse to renew his license and the notice contains those matters required by 2-4-601"; in (2), before "conducted", deleted "held before all five members of the board and must be"; and made minor changes in style.

Cross-References

Administrative Procedure Act, Title 2, ch. 4.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of director, 37-1-121.

Disciplinary authority of boards — injunctions, 37-1-136.

Part 4
Regulation

37-22-401. Privileged communications — exceptions. A licensee may not disclose any information he acquires from clients consulting him in his professional capacity except:

(1) with the written consent of the client or, in the case of the client's death or mental incapacity, with the written consent of the client's personal representative or guardian;

(2) that he need not treat as confidential a communication otherwise confidential that reveals the contemplation of a crime by the client or any other person or that in his professional opinion reveals a threat of imminent harm to the client or others;

(3) that if the client is a minor and information acquired by the licensee indicates that the client was the victim of a crime, the licensee may be required to testify fully in relation thereto in any investigation, trial, or other legal proceeding in which the commission of such crime is the subject of inquiry;

(4) that if the client or his personal representative or guardian brings an action against a licensee for a claim arising out of the social worker-client relationship, the client is considered to have waived any privilege;

(5) to the extent that the privilege is otherwise waived by the client; and

(6) as may otherwise be required by law.

History: En. Sec. 12, Ch. 544, L. 1983.

Cross-References

Privileges, Title 26, ch. 1, part 8.

Duties of witnesses, Title 26, ch. 2, part 3.

37-22-402 through 37-22-410 reserved.

37-22-411. Violations — penalties. (1) It is a misdemeanor for a person to:

(a) represent himself as a licensed social worker without being licensed under this chapter;

(b) obtain or attempt to obtain a license or license renewal by bribery or fraudulent representation; or

(c) knowingly make a false statement on any form used by the board to implement this chapter or the rules adopted under this chapter.

(2) A person convicted under this section shall be imprisoned in the county jail for a period not exceeding 6 months or fined not more than $500, or both. A person convicted of a second offense under this section shall be punished by both such fine and imprisonment.

History: En. Sec. 13, Ch. 544, L. 1983.

CHAPTER 23

PROFESSIONAL COUNSELING

Part 1 — General

37-23-101. Purpose.
37-23-102. Definitions.
37-23-103. Powers and duties of board.

Part 2 — Licensing

37-23-201. Representation as licensed clinical professional counselor — license required.
37-23-202. Licensure requirements.
37-23-203. Issuance, effective date, and display of license.
37-23-204. Reciprocity.
37-23-205. Renewal of license.
37-23-206. Fees.
37-23-207. Inactive status.
37-23-208 through 37-23-210 reserved.
37-23-211. Suspension or revocation of license.
37-23-212. Procedure for charging violation of professional or ethical standard.

Part 3 — Regulation—Penalties

37-23-301. Privileged communications — exceptions.
37-23-302 through 37-23-310 reserved.
37-23-311. Misdemeanor violations — penalties.

Chapter Cross-References

Disability insurance — freedom of choice in selection of practitioners, 33-22-111.

Part 1

General

37-23-101. Purpose. The legislature finds and declares that because the profession of professional counseling profoundly affects the lives of people of this state, it is the purpose of this chapter to provide for the common good by ensuring ethical, qualified, and professional practice of professional counseling. This chapter and the rules promulgated under 37-23-103 set standards of qualification, education, training, and experience and establish professional ethics for those who seek to engage in the practice of professional counseling as licensed professional counselors.

History: En. Sec. 1, Ch. 572, L. 1985.

37-23-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of social work examiners and professional counselors established under 2-15-1854.

(2) "Licensee" means a person licensed under this chapter.

(3) "Professional counseling" means engaging in methods and techniques that include:

(a) counseling, which means assisting an individual or a group, through the counseling relationship, to develop understanding of intrapersonal and interpersonal problems, to define goals, to make decisions, to plan a course of action reflecting his or their needs, interests, and abilities, and to use informational and community resources;

(b) appraisal, which means selecting, administering, scoring, and interpreting instruments designed to assess an individual's aptitudes, attitudes, abilities, achievement, interests, and personal characteristics and using nonstandardized methods and techniques for understanding human behavior in relation to coping with, adapting to, or changing life situations;

(c) technical assistance, which means applying scientific principles and procedures in counseling, guidance, and human development to provide assistance in understanding and solving a current or potential problem that an individual may have in relation to another individual, a group or organization, or other third party; and

(d) referral, which means evaluating information to identify needs or problems of an individual and to determine the advisability of referral to other specialists, informing the individual of such judgment, and communicating as requested or considered appropriate with such referral sources.

History: En. Sec. 2, Ch. 572, L. 1985.

Cross-References

Social work, Title 37, ch. 22.

37-23-103. Powers and duties of board. (1) The board shall:

(a) recommend amendments to this chapter to the governor or the legislature, or both;

(b) recommend prosecutions for violations of 37-23-311 to the attorney general or appropriate county attorneys, or both;

(c) annually publish a list of the names and addresses of all persons who are licensed professional counselors;

(d) establish requirements for continuing education that are conditions of license renewal;

(e) meet to perform the duties described in this section;

(f) adopt rules that set professional and ethical standards for licensed professional counselors which are based on national standards and such other rules as may be reasonably necessary for the administration of this chapter; and

(g) distribute a copy of the professional and ethical standards to each licensed professional counselor.

(2) The board may adopt rules governing the issuance of certificates of special competence in particular areas of practice as a licensed professional counselor. The board shall establish criteria for each particular area for which a certificate is issued.

History: En. Sec. 3, Ch. 572, L. 1985.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Public records, Title 2, ch. 6.

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Preservation of records, Title 22, ch. 3, part 2.

Duty of Department to keep records, 37-1-101.

Duty of Department to provide facilities, 37-1-101.

Licensing investigation and review — records access, 37-1-135.

Disrupting meeting as disorderly conduct, 45-8-101.

Part 2
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-23-201. Representation as licensed clinical professional counselor — license required. (1) Upon issuance of a license in accordance with this chapter, a licensee may use the title “licensed clinical professional counselor”. Except as provided in subsection (2), a person may not represent that the person is a licensed professional counselor or licensed clinical professional counselor by adding the letters “LPC” or “LCPC” after the person’s name or by any other means unless licensed under this chapter.

(2) Individuals licensed in accordance with this chapter before October 1, 1993, who use the title “licensed professional counselor” or “LPC” may use the title “licensed clinical professional counselor” or “LCPC”.

(3) Subsection (1) does not prohibit:

(a) a qualified member of another profession, such as a physician, psychologist, lawyer, pastoral counselor, probation officer, court employee, nurse, social worker, school counselor, or educator, from professional counseling consistent with that person's training if the person does not use a title or description incorporating the words "licensed professional counselor", "licensed counselor", "professional counselor", "licensed clinical professional counselor", or "licensed clinical counselor";

(b) an activity or service or use of an official title by a person employed by a federal, state, county, or municipal agency or an educational, research, or charitable institution that is a part of the duties of the office or position;

(c) an activity or service of an employee of a business establishment performed solely for the benefit of the establishment's employees;

(d) an activity or service of a student, intern, or resident in mental health counseling pursuing a course of study at an accredited university or college or working in a generally recognized training center if the activity or service constitutes a part of the supervised course of study;

(e) an activity or service of a person who is not a resident of this state, which activity or service is rendered for a period that does not exceed, in the aggregate, 60 days during a calendar year, if the person is authorized under the law of the state or country of residence to perform such activity or service. However, such person shall report to the department of commerce the nature and extent of the activity or service if it exceeds 10 days in a calendar year.

(f) pending disposition of the application for a license, the activity or service by a person who has recently become a resident of this state, has applied for a license within 90 days of taking up residency in this state, and is licensed to perform such activity or service in the state of his former residence.

History: En. Sec. 4, Ch. 572, L. 1985; amd. Sec. 9, Ch. 552, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 552 inserted first sentence of (1) that read: "Upon issuance of a license in accordance with this chapter, a licensee may use the title "licensed clinical professional counselor"" and at beginning of second sentence inserted exception clause, near middle, after "counselor", inserted "or licensed clinical professional counselor", and after ""LPC"" inserted "or "LCPC""; inserted (2) allowing certain licensees to use the title of licensed clinical professional counselor; at end of (3)(a), after "professional counselor", inserted ""licensed clinical professional counselor", or "licensed clinical counselor""; and made minor changes in style.

37-23-202. Licensure requirements. (1) An applicant for licensure must have satisfactorily completed:

(a) a planned graduate program of 60 semester hours, primarily counseling in nature, 6 semester hours of which were earned in an advanced counseling practicum, which resulted in a graduate degree from an institution accredited to offer a graduate program in counseling;

(b) 3,000 hours of counseling practice supervised by a licensed professional counselor or licensed member of an allied mental health profession, at least half of which was postdegree. The applicant must have each supervisor endorse the application for licensure, attesting to the number of hours supervised.

(c) and passed an examination prepared and administered by:

(i) the board, based on a national examination approved by the board;

(ii) the national board of certified counselors; or

(iii) the national academy of certified clinical mental health counselors; and

(d) an application form and process prescribed by the board.

(2) The board shall provide by rule for licensure:

(a) of a person who possesses a minimum 45 semester hour graduate degree that is primarily related to counseling and that is from an institution accredited to offer a graduate program in counseling, by specifying the additional graduate credit hours necessary to fulfill the requirements of subsection (1)(a) in counseling courses in an approved program within a period of 5 years; and

(b) of a person who possesses a license or certification as a professional counselor from an agency located in another state whose requirements are less than the requirements of this chapter, by:

(i) crediting past clinical experience in psychotherapy and counseling; and

(ii) recommending additional education or experience necessary to fulfill the requirements of this chapter.

History: En. Sec. 5, Ch. 572, L. 1985; amd. Sec. 3, Ch. 78, L. 1987; amd. Sec. 1, Ch. 197, L. 1993; amd. Sec. 10, Ch. 552, L. 1993.

Compiler's Comments

1993 Amendments — Composite Section: Chapter 197 deleted former (1) specifying licensing prerequisites for professional counselors licensed before December 31, 1987 (see 1993 Session Law for text); in (1), at beginning, deleted "To be licensed after December 31, 1987"; in (1)(a) substituted "60 semester hours" for "90 quarter hours" in reference to a planned graduate program and substituted "6 semester hours" for "nine quarter hours" in reference to advanced counseling; inserted (2) requiring Board to provide by rule for licensing certain persons; and made minor changes in style. Amendment effective March 26, 1993.

Chapter 552 deleted former (1) specifying licensing prerequisites for professional counselors licensed before December 31, 1987 (see 1993 Session Law for text); at beginning of (1)(b) substituted "3,000 hours" for "2,000 hours"; and made minor changes in style.

Style changes were slightly different in the two chapters. In each case, the codifier chose the more appropriate of the two.

Applicability: Section 12(2), Ch. 552, L. 1993, provided that subsection (2) of this section applies to persons licensed on or after July 1, 1996.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-23-203. Issuance, effective date, and display of license. (1) If an applicant meets the requirements contained in 37-23-202 and has paid the appropriate fees, the board shall issue a license to the applicant attesting to the date and fact of licensure. The license is effective on the date of issuance and must be renewed every year as provided in 37-23-205.

(2) The license must be displayed in the registrant's place of business or employment.

History: En. Sec. 7, Ch. 572, L. 1985.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-23-204. Reciprocity. Upon payment of the license fee provided for in 37-23-206, the board may issue a license to a person who, at the time of application, is licensed or certified as a professional counselor by an agency located in another state if the requirements of such licensure or certification are substantially similar to the requirements of this chapter.

History: En. Sec. 8, Ch. 572, L. 1985.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-23-205. Renewal of license. (1) A license may be issued for no longer than 1 year. The board may adopt rules to provide for annual renewal of an existing license.

(2) An application for renewal of an existing license made within 60 days after the expiration of the license is timely, and the rights and privileges of the applicant during that period remain in effect.

(3) Application for renewal must be made upon a form provided by the department. A renewal license must be issued upon payment of a renewal fee set by the board and upon submitting proof of completion of continuing education requirements established by the board.

(4) An individual may renew a license in the manner provided in subsection (3) within 1 year of the expiration date of the license. An applicant for renewal shall provide the board with proof that the applicant has satisfied the continuing education requirements of the board for the year for which the license is to be renewed.

(5) The renewal fee is increased by 10% for each month or part of a month that the renewal is delayed after the 60-day period provided in subsection (2). The maximum fee for delayed renewal may not exceed twice the normal renewal fee.

(6) A license not renewed within 1 year following its expiration date terminates automatically.

History: En. Sec. 9, Ch. 572, L. 1985; amd. Sec. 5, Ch. 552, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 552 inserted (4) allowing renewal within 1 year of expiration; inserted (5) allowing a monthly renewal fee increase; and inserted (6) providing that a license expires if not renewed within 1 year after expiration.

37-23-206. Fees. (1) Each applicant for a license shall, upon submitting his application to the board, pay an application fee set by the board commensurate with costs.

(2) Each applicant for a license required to take an examination shall, before commencement of the examination, pay an examination fee set by the board commensurate with costs.

(3) Each applicant shall, before receipt of a license or license renewal, pay a fee set by the board commensurate with costs.

(4) Subject to 37-1-101(6), money paid for application, examination, license, and license renewal fees must be deposited in the state special revenue fund for the use of the board.

History: En. Sec. 6, Ch. 572, L. 1985.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-23-207. Inactive status. (1) The board shall reclassify, for a maximum of 2 consecutive years, an active license to an inactive license for a licensee who furnishes satisfactory evidence that the licensee has discontinued the practice of professional counseling within this state and has satisfied the continuing education requirements of the board for each year of inactive licensure.

(2) An individual with an inactive status license who wishes to convert the license to active status shall make application for conversion in the manner prescribed by the board. The application must be accompanied by a renewal fee prescribed by the board. If the applicant for conversion to active status has held an inactive status license for more than 1 year, the applicant shall submit with the application satisfactory evidence that the applicant has earned the number of continuing education credits prescribed by the board for each year that the applicant has held an inactive status license.

(3) An individual on inactive status for more than 2 consecutive years shall comply with the requirements of 37-23-202 in order to convert an inactive status license to an active status license.

(4) An inactive status licensee may not practice professional counseling in this state.

History: En. Sec. 8, Ch. 552, L. 1993.

37-23-208 through 37-23-210 reserved.

37-23-211. Suspension or revocation of license. (1) The board may suspend or revoke the license of a person found according to the procedure contained in 37-23-212 to have violated a professional or ethical standard adopted by the board. A person may not practice counseling in this state as a licensed professional counselor during the period for which his license is suspended or revoked.

(2) The board may not suspend a license for more than 6 months. Upon termination of the suspension period, the person whose license has been suspended must undergo a board review before resuming practice as a licensed professional counselor.

(3) The board may not revoke a license for less than 3 years. Upon termination of the revocation period, the person whose license has been revoked may apply to the board for reinstatement.

History: En. Sec. 10, Ch. 572, L. 1985.

Cross-References

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of Director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-23-212. Procedure for charging violation of professional or ethical standard. (1) A member of the board or any other person may charge a licensee with violating a professional or ethical standard adopted by the board. The charge must be made by affidavit, subscribed and sworn to by the person making it, and filed with the department of commerce. The charge must be investigated by the board, and unless the board dismisses the charge after investigation as unfounded or trivial, the board shall act on the charge.

(2) A hearing on the charge must be conducted in accordance with 37-1-121(1) and the Montana Administrative Procedure Act.

History: En. Sec. 11, Ch. 572, L. 1985; amd. Sec. 6, Ch. 552, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 552 at end of (1), after "charge", deleted "within 6 months after the date on which the charge was filed. The board is considered to have acted on a charge if it has given notice by mail to the licensee of its intent to suspend or revoke his license and the notice contains those matters required by 2-4-601"; and made minor changes in style.

Cross-References

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of Director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Part 3
Regulation — Penalties

37-23-301. Privileged communications — exceptions. A licensee may not disclose any information he acquires from clients consulting him in his professional capacity except:

(1) with the written consent of the client or, in the case of the client's death or mental incapacity, with the written consent of the client's personal representative or guardian;

(2) that he need not treat as confidential a communication otherwise confidential that reveals the contemplation of a crime by the client or any other person or that in his professional opinion reveals a threat of imminent harm to the client or others;

(3) that if the client is a minor and information acquired by the licensee indicates that the client was the victim of a crime, the licensee may be required to testify fully in relation thereto in any investigation, trial, or other legal proceeding in which the commission of such crime is the subject of inquiry;

(4) that if the client or his personal representative or guardian brings an action against a licensee for a claim arising out of the counselor-client relationship, the client is considered to have waived any privilege;

(5) to the extent that the privilege is otherwise waived by the client; and

(6) as may otherwise be required by law.

History: En. Sec. 12, Ch. 572, L. 1985.

Cross-References

Privileges, Title 26, ch. 1, part 8.

Duties of witnesses, Title 26, ch. 2, part 3.

37-23-302 through 37-23-310 reserved.

37-23-311. Misdemeanor violations — penalties. (1) It is a misdemeanor for a person to knowingly:

(a) represent himself as a licensed professional counselor without being licensed under this chapter;

(b) obtain or attempt to obtain a license or license renewal by bribery or fraudulent representation; or

(c) make a false statement on any form used by the board to implement this chapter or the rules adopted under this chapter.

(2) A person convicted under this section shall be imprisoned in the county jail for a period not exceeding 6 months or fined not more than $500, or both.

A person convicted of any subsequent offense under this section shall be punished by both such fine and imprisonment.

History: **En. Sec. 13, Ch. 572, L. 1985.**

CHAPTER 24

OCCUPATIONAL THERAPY

Part 1 — General Provisions

37-24-101. Short title.
37-24-102. Purpose.
37-24-103. Definitions.
37-24-104. Exemptions.
37-24-105. Use of superficial physical agent modalities.
37-24-106. Use of sound and electrical physical agent modalities.

Part 2 — Board of Occupational Therapy Practice

37-24-201. Organization — general rulemaking power — quorum.
37-24-202. Powers and duties of board.
37-24-203. Compensation and expenses.

Part 3 — Licensing

37-24-301. License required.
37-24-302. Application.
37-24-303. Requirements for licensure.
37-24-304. Examination.
37-24-305. Waiver of requirements for licensure.
37-24-306. Issuance of license.
37-24-307. Limited permit.
37-24-308. Renewal of license — inactive status.
37-24-309. Denial, suspension, or revocation of license.
37-24-310. Fees.
37-24-311. Penalty.

Part 1
General Provisions

37-24-101. Short title. This chapter may be cited as the "Occupational Therapy Practice Act".

History: **En. Sec. 1, Ch. 629, L. 1985.**

37-24-102. Purpose. The legislature declares that it is the purpose of this chapter to provide for the regulation of persons offering occupational therapy services in order to:

(1) safeguard the public health, safety, and welfare;

(2) protect the public from incompetent, unscrupulous, and unauthorized persons;

(3) assure the highest degree of professional conduct on the part of occupational therapists and occupational therapy assistants; and

(4) assure the availability of occupational therapy services of high quality to persons in need of such services.

History: **En. Sec. 2, Ch. 629, L. 1985.**

37-24-103. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of occupational therapy practice established by 2-15-1859.

(2) "Certified occupational therapy assistant" means a person licensed to assist in the practice of occupational therapy under this chapter, who works under the general supervision of an occupational therapist in accordance with the provisions of the Essentials for an Approved Educational Program for the Occupational Therapy Assistant, published by the American occupational therapy association and adopted by the board.

(3) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(4) "Occupational therapist" means a person licensed to practice occupational therapy under this chapter.

(5) "Occupational therapy" means the use of purposeful activity and interventions to achieve functional outcomes to maximize the independence and the maintenance of health of an individual who is limited by physical injury or illness, psychosocial dysfunction, mental illness, developmental or learning disability, the aging process, cognitive impairment, or an adverse environmental condition. The practice encompasses assessment, treatment, and consultation. Occupational therapy services may be provided individually, in groups, or through social systems. Occupational therapy interventions include but are not limited to:

(a) teaching daily living skills;

(b) developing perceptual-motor skills and sensory integrative functioning;

(c) developing play skills and leisure capacities and enhancing educational performance skills;

(d) designing, fabricating, or applying splints or selective adaptive equipment and training in the use of upper extremity prosthetics or upper extremity orthotic devices;

(e) providing for the development of emotional, motivational, cognitive, psychosocial, or physical components of performance;

(f) providing assessment and evaluation, including the use of skilled observation or the administration and interpretation of standardized or nonstandardized tests and measurements to identify areas for occupational therapy services;

(g) adapting environments for the disabled, including assistive technology, such as environmental controls, wheelchair modifications, and positioning;

(h) developing feeding and swallowing skills;

(i) enhancing and assessing work performance and work readiness through occupational therapy intervention, including education and instruction, activities to increase and improve general work behavior and skill, job site evaluation, on-the-job training and evaluation, development of work-related activities, and supported employment placement;

(j) providing neuromuscular facilitation and inhibition, including the activation, facilitation, and inhibition of muscle action, both voluntary and involuntary, through the use of appropriate sensory stimulation, including vibration or brushing, to evoke a desired muscular response;

(k) employing physical agent modalities as defined in this section; and

(l) promoting health and wellness.

(6) "Occupational therapy aide" means a person who assists in the practice of occupational therapy under the direct supervision of an occupational therapist or occupational therapy assistant and whose activities require an understanding of occupational therapy but do not require professional or advanced training in the basic anatomical, biological, psychological, and social sciences involved in the practice of occupational therapy.

(7) "Physical agent modalities" means those modalities that produce a response in soft tissue through the use of light, water, temperature, sound, or electricity. Physical agent modalities are characterized as adjunctive methods used in conjunction with or in immediate preparation for patient involvement in purposeful activity. Superficial physical agent modalities include hot packs, cold packs, ice, fluidotherapy, paraffin, water, and other commercially available superficial heating and cooling devices. Use of superficial physical agent modalities is limited to the shoulder, arm, elbow, forearm, wrist, and hand and is subject to the provisions of 37-24-105. Use of sound and electrical physical agent modality devices is limited to the elbow, forearm, wrist, and hand and is subject to the provisions of 37-24-106.

(8) "Purposeful activity" means an activity in which the individual is an active, voluntary participant and is directed toward a goal that the individual considers meaningful. Purposeful activities are used to evaluate, facilitate, restore, or maintain individuals' abilities to function within their daily occupations.

History: En. Sec. 3, Ch. 629, L. 1985; amd. Sec. 1, Ch. 35, L. 1991; amd. Sec. 1, Ch. 297, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 297 inserted definitions of certified occupational therapy assistant, physical agent modalities, and purposeful activity; in definition of occupational therapy, near beginning of first sentence after "activity", substituted "and interventions to achieve functional outcomes to maximize the independence and the maintenance of health of" for "with", after "dysfunction" inserted "mental illness", and at end, after "process", substituted "cognitive impairment, or an adverse environmental condition" for "in order to maximize independence, prevent disability, and maintain health", in second sentence, after "encompasses", substituted "assessment" for "evaluation", (in former temporary version deleted former third and fourth sentences that read: "Treatment includes the use of superficial heat and cold, including hot packs, cold packs, ice, paraffin, and water, applied to the elbow, forearm, and hand; vibration and brushing; treatment of oral motor conditions; and the use of therapeutic devices limited to the elbow, forearm, and hand that the board approves consistent with the basic education requirements for professional licensure under this chapter. Treatment is limited to procedures in preparation for or in conjunction with purposeful activity"), in fourth sentence substituted "Occupational therapy interventions" for "Specific occupational therapy services", in (c), after "skills", deleted "and prevocational" and at end inserted "and enhancing educational performance skills", substituted (e) regarding provision of performance components for former language that read: "using specifically designed crafts and exercises to enhance functional performance", substituted (f) regarding assessment and evaluation for former language that read: "administering and interpreting tests such as manual muscle and range of motion", at end of (g) substituted "disabled, including assistive technology, such as environmental controls, wheelchair modifications, and positioning" for "handicapped", inserted (h) regarding feeding and swallowing skills, inserted (i) regarding work performance and work readiness, inserted (j) regarding neuromuscular facilitation and inhibition, inserted (k) regarding physical agent modalities, and inserted (l) regarding health promotion;

deleted former definition of occupational therapy assistant that read: ""Occupational therapy assistant" means a person licensed to assist in the practice of occupational therapy under this chapter, who works under the general supervision of an occupational therapist in accordance with the provisions of the Essentials for an Approved Educational Program for the Occupational Therapy Assistant, published by the American occupational therapy association, as it read on October 1, 1985"; and made minor changes in style. Amendment effective April 9, 1993.

37-24-104. Exemptions. Nothing in this chapter prevents or restricts the practice, services, or activities of:

(1) a person licensed in this state under any other law or certified or registered as a member of an occupational or professional group other than occupational therapy from engaging in the profession or occupation for which he is licensed, certified, or registered;

(2) a person who provides treatment, teaches living skills, designs orthotic or prosthetic devices, administers tests, or engages in other activities described in 37-24-103 but does not represent himself as an occupational therapist;

(3) a person employed as an occupational therapist or occupational therapy assistant by an institution or agency of the federal government;

(4) a person pursuing a supervised course of study leading to a degree or certificate in occupational therapy at an accredited institution or under an approved educational program if the person is designated by a title that clearly indicates his status as a student or trainee;

(5) a person fulfilling the supervised fieldwork experience requirements of 37-24-303 if the experience constitutes a part of the experience necessary to meet the requirements of that section;

(6) a person performing occupational therapy services in the state if these services are performed for no more than 10 days in a calendar year in association with an occupational therapist licensed under this chapter, provided that:

(a) the person is licensed under the law of another state that has licensure requirements at least as stringent as the requirements of this chapter; or

(b) the person meets the requirements for certification as an occupational therapist registered (OTR) or a certified occupational therapy assistant (COTA), established by the American occupational therapy certification board (AOTCB); or

(7) a person employed as an occupational therapy aide.

History: En. Sec. 4, Ch. 629, L. 1985; amd. Sec. 1, Ch. 325, L. 1989.

37-24-105. Use of superficial physical agent modalities. (1) Except as provided in subsection (2), a person may not use occupational therapy techniques involving superficial physical agent modalities unless the person:

(a) is a licensed occupational therapist under this chapter;

(b) limits application of superficial agent modalities to the shoulder, arm, elbow, forearm, wrist, and hand; and

(c) has successfully completed 16 hours of instruction or training in superficial physical agent modalities and documents competency, as approved by the board, in the following areas:

(i) principles of physics related to specific properties of light, water, temperature, sound, or electricity, as indicated by selected modalities;

(ii) physiological, neurophysiological, and electrophysiological changes that occur as a result of the application of selected modalities;

(iii) the response of normal and abnormal tissue to the application of selected modalities;

(iv) indications and contraindications related to the selection and application of the modality;

(v) guidelines for the treatment or administration of the modality within the philosophical framework of occupational therapy;

(vi) guidelines for educating the patient, including information about risks and benefits of the occupational therapy techniques;

(vii) safety rules and precautions related to the selected modalities;

(viii) methods for documenting the effectiveness and immediate and long-term effects of treatment in relation to task-oriented activities; and

(ix) characteristics of and guidelines for the use of therapy equipment, including safe operation, adjustment, and care and maintenance of the equipment.

(2) A certified occupational therapy assistant who works under the direct supervision of a qualified occupational therapist may apply superficial physical agent modalities to the shoulder, arm, elbow, forearm, wrist, and hand.

History: En. Sec. 2, Ch. 297, L. 1993.

Compiler's Comments

Effective Date: Section 5, Ch. 297, L. 1993, provided: "[This act] is effective on passage and approval." Approved April 9, 1993.

37-24-106. Use of sound and electrical physical agent modalities. A person may not utilize occupational therapy techniques involving sound or electrical physical agent modality devices unless the person:

(1) is licensed under this chapter;

(2) limits application of sound and electrical physical agent modalities to the elbow, forearm, wrist, or hand to restore and enhance hand function; and

(3) (a) provides to the board documentation of certification by the hand certification commission, inc., and has successfully completed 40 hours of instruction or training in sound and electrical physical agent modality devices and documents competency, as approved by the board, in the areas provided in 37-24-105(1)(c); or

(b) has successfully completed 100 hours of instruction or training in sound and electrical physical agent modality devices and documents competency, as approved by the board, in the areas provided in 37-24-105(1)(c).

History: En. Sec. 3, Ch. 297, L. 1993.

Part 2

Board of Occupational Therapy Practice

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

37-24-201. Organization — general rulemaking power — quorum. (1) The board of occupational therapy practice shall meet annually and elect a chairman and a secretary from its members. The board shall hold other meetings when necessary to transact its business.

(2) The board may adopt rules for the conduct of its affairs and the administration of this chapter. Rules adopted by the board may include such rules as are reasonable or necessary for the proper performance of its duties and the regulation of proceedings before it.

(3) Three board members constitute a quorum for the transaction of business.

History: En. Sec. 6, Ch. 629, L. 1985.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Public records, Title 2, ch. 6.

Preservation of records, Title 22, ch. 3, part 2.

Duty of Department to keep records, 37-1-101.

Duty of Department to provide facilities, 37-1-101.

Licensing investigation and review — records access, 37-1-135.

Disrupting meeting as disorderly conduct, 45-8-101.

37-24-202. Powers and duties of board. (1) The board shall:

(a) administer, coordinate, and enforce the provisions of this chapter;

(b) evaluate the qualifications of applicants for licensure under this chapter and approve and supervise the examination of such applicants;

(c) investigate persons engaging in practices that allegedly violate the provisions of this chapter;

(d) adopt rules relating to professional licensure and the establishment of ethical standards of practice under this chapter;

(e) conduct hearings and keep records and minutes as the board considers necessary to carry out its functions; and

(f) adopt a seal by which the board shall authenticate its proceedings.

(2) A copy of the proceedings, records, or acts of the board, signed by the chairman or secretary of the board and stamped with the seal, is prima facie evidence of the validity of such document.

(3) The department may employ persons it considers necessary to carry out the provisions of this chapter.

History: En. Sec. 7, Ch. 629, L. 1985.

Cross-References

Oath defined, 1-1-201.

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Oaths, Title 1, ch. 6.

Power of agencies to issue subpoenas, 2-4-104.

Power of hearing officer to issue subpoenas, 2-4-611.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.

37-24-203. Compensation and expenses. Each board member is entitled to compensation and travel expenses as provided in 37-1-133.

History: En. Sec. 8, Ch. 629, L. 1985.

Part 3
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-24-301. License required. (1) (a) No person may hold himself out as an occupational therapist or as being able to practice occupational therapy or able to render occupational therapy services in this state unless he is licensed as an occupational therapist under the provisions of this chapter.

(b) No person may practice or hold himself out as an occupational therapy assistant in this state unless he is licensed as an occupational therapist or as an occupational therapy assistant.

(2) Only an individual may be licensed under this chapter.

History: En. Sec. 9, Ch. 629, L. 1985.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-24-302. Application. An applicant applying for licensure as an occupational therapist or as an occupational therapy assistant shall file a written application on forms prescribed by the board, showing that the applicant meets the requirements of 37-24-303(1)(a) through (1)(c).

History: En. Sec. 10, Ch. 629, L. 1985; amd. Sec. 2, Ch. 325, L. 1989.

37-24-303. Requirements for licensure. (1) To be eligible for licensure by the board as an occupational therapist or an occupational therapy assistant, the applicant shall:

(a) present evidence of having successfully completed the academic requirements of an educational program recognized by the board for the license sought;

(b) submit evidence of having successfully completed a period of supervised fieldwork experience arranged by the recognized educational institution where he completed the academic requirements or by a nationally recognized professional association;

(c) submit evidence of having been certified by the American occupational therapy certification board (AOTCB); and

(d) pass an examination as provided for in 37-24-304.

(2) The supervised fieldwork experience requirement for an occupational therapist is a minimum of 6 months. The supervised fieldwork experience requirement for an occupational therapy assistant is a minimum of 2 months.

History: En. Sec. 11, Ch. 629, L. 1985; amd. Sec. 3, Ch. 325, L. 1989.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-24-304. Examination. (1) A person who satisfies the educational and experience requirements of 37-24-303 may apply for examination in the manner prescribed by the board. The application must be accompanied by the nonrefundable fee prescribed by the board under 37-24-310. An unsuccessful examinee may apply for reexamination upon payment of the prescribed fee.

(2) The board shall adopt a written examination for occupational therapists and a written examination for occupational therapy assistants and establish standards for acceptable performance.

(3) Examinations shall be given at least twice each year at a time and place and under such supervision as the board may determine. The board shall give notice of the examinations in accordance with rules adopted by the board.

(4) Examinees may obtain their scores and review their examinations in accordance with rules established by the board.

History: En. Sec. 12, Ch. 629, L. 1985.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

37-24-305. Waiver of requirements for licensure. (1) The board may waive the examination, education, or experience requirements and grant a license to an applicant who presents proof of current licensure as an occupational therapist or occupational therapy assistant in another state, the District of Columbia, or a territory of the United States which requires standards for licensure that the board considers equivalent to the requirements for licensure under this chapter.

(2) The board may waive the examination, education, or experience requirements and grant a license to a person certified by the American occupational therapy certification board (AOTCB) as a certified occupational therapy assistant (COTA) or an occupational therapist registered (OTR) after October 1, 1985.

(3) Occupational therapists and occupational therapy assistants trained in a foreign country must satisfy the examination requirements of 37-24-304. The board shall require foreign-trained applicants, before examination, to furnish proof of educational and supervised fieldwork requirements substantially equal to those required by 37-24-303.

(4) The board may waive the educational requirements and license an applicant as an occupational therapist if the applicant has practiced as an occupational therapy assistant for 4 years, has completed the experience requirement before January 1, 1988, and has passed the examination for occupational therapists.

History: En. Sec. 13, Ch. 629, L. 1985; amd. Sec. 4, Ch. 325, L. 1989.

37-24-306. Issuance of license. (1) The board shall issue a license to any person who meets the requirements of this chapter upon payment of the prescribed license fee.

(2) The license must include the dates of issuance and expiration.

History: En. Sec. 14, Ch. 629, L. 1985.

37-24-307. Limited permit. A limited permit may be granted to a person who has completed the education and experience requirements of this chapter. The permit allows the person to practice occupational therapy in association with a licensed occupational therapist. This permit is valid until the person is issued a license under 37-24-306 or until the results of the examination taken by the person are available to the board. This limited permit may be renewed only one time if the person has failed the examination.

History: En. Sec. 15, Ch. 629, L. 1985.

37-24-308. Renewal of license — inactive status. (1) Each license issued under this chapter is subject to annual renewal upon the payment of a renewal fee and expires unless renewed in the manner prescribed by the rules of the board. The board may provide for the late renewal of a license upon the payment of a late fee in accordance with its rules, but no late renewal of a license may be granted more than 5 years after its expiration.

(2) Upon request, the board may grant inactive status to a licensee who:

(a) does not practice as an occupational therapist or an occupational therapy assistant; and

(b) does not hold himself out as an occupational therapist or an occupational therapy assistant.

History: En. Sec. 16, Ch. 629, L. 1985.

37-24-309. Denial, suspension, or revocation of license. (1) The board may refuse to issue or renew a license or may revoke or suspend the license of any licensee or applicant if he has:

(a) obtained a license by means of fraud, misrepresentation, or concealment of material facts;

(b) been found guilty of unprofessional conduct as defined by rules adopted by the board;

(c) been convicted of a crime considered sufficient under 37-1-203 to warrant denial, revocation, or suspension of the license;

(d) violated any lawful order or rule of the board; or

(e) violated any provision of this chapter.

(2) Denial, suspension, or revocation of a license is permissible only after a hearing and procedures that comply with all applicable requirements of the Montana Administrative Procedure Act.

(3) One year after the denial, suspension, or revocation of a license, a person may apply for reinstatement and licensure. The board may in its discretion require an examination for reinstatement.

History: En. Sec. 17, Ch. 629, L. 1985; amd. Sec. 5, Ch. 325, L. 1989.

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of Director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-24-310. Fees. (1) The board may adopt fees in accordance with 37-1-134 for:

(a) applications for licensure;

(b) examination;

(c) initial license issuance;

(d) license renewal;

(e) late license renewal; and
(f) limited permit issuance.

(2) All fees collected by the board under this section must be deposited in the state special revenue fund for the use of the board in administering this act, subject to 37-1-101(6).

History: En. Sec. 18, Ch. 629, L. 1985.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-24-311. Penalty. A person convicted of violating this chapter is guilty of a misdemeanor and shall be fined an amount not to exceed $500.

History: En. Sec. 19, Ch. 629, L. 1985.

CHAPTER 25

NUTRITIONISTS

Part 1 — General

37-25-101. Legislative finding and purpose.
37-25-102. Definitions.

Part 2 — Board of Medical Examiners

37-25-201. Powers and duties of the board.

Part 3 — Licensing

37-25-301. Scope of dietetic-nutrition practice.
37-25-302. Licensing requirements.
37-25-303. Issuance of license — effective date.
37-25-304. Exemptions from licensure requirements.
37-25-305. Representation to public as nutritionist — limitation on use of title.
37-25-306. Reciprocity.
37-25-307. Renewal of license — continuing education.
37-25-308. Grounds for revocation, suspension, or refusal to renew license.

Part 1

General

Part Cross-References

Montana Access to Food and Nutrition Act, Title 50, ch. 49, part 1.

37-25-101. Legislative finding and purpose. The legislature finds and declares that the practice of nutrition assessment and counseling affects the public health, safety, and welfare. It is the purpose of this chapter to provide for the licensing and regulation of nutritionists in order to protect the public health, safety, and welfare, to ensure that nutritional services of high quality are available to the people of Montana, and to provide a means of identifying those qualified to practice nutrition.

History: En. Sec. 1, Ch. 529, L. 1987.

37-25-102. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Accredited" means accredited through the council on postsecondary accreditation and the U.S. department of education.

(2) "Board" means the board of medical examiners.

(3) "Commission" means the commission on dietetic registration, which is a member of the national commission for health certifying agencies.

(4) "Dietetic-nutrition practice" or "dietetics-nutrition" is the integration and application of principles derived from the sciences of nutrition, biochemistry, physiology, and food management and from the behavioral and social sciences to achieve and maintain health. The primary function of dietetic-nutrition practice is to provide nutrition assessment and nutrition counseling.

(5) "General nutritional information" means information on:

(a) principles of good nutrition;

(b) foods to be included in a daily diet;

(c) the essential nutrients needed by the body;

(d) recommended amounts of these nutrients;

(e) the action of these nutrients on the body;

(f) the effects of deficiencies in these nutrients; or

(g) foods and supplements that are good sources of essential nutrients.

(6) "Licensed nutritionist" means a nutritionist licensed under this chapter.

(7) "Nutrition assessment" means the evaluation of nutritional needs of individuals and groups based on appropriate biochemical, anthropometric, physical, and dietary data in order to determine nutrient needs and to recommend appropriate nutritional intake, including both enteral and parenteral nutrition.

(8) "Nutrition counseling" means providing assistance and advice to individuals or groups in the selection of food and other sources of nutrients to achieve appropriate nutritional intake, based on:

(a) the nutrition assessment;

(b) the composition of food and other sources of nutrients; and

(c) meal preparation consistent with cultural background and socioeconomic status.

(9) "Nutritionist" means:

(a) a person licensed under this chapter; or

(b) a person who has satisfactorily completed a baccalaureate and master's or a doctoral degree in the field of dietetics, food and nutrition, or public health nutrition conferred by an accredited college or university.

History: En. Sec. 2, Ch. 529, L. 1987; amd. Sec. 48, Ch. 83, L. 1989.

Compiler's Comments

Effective Date: Section 5, Ch. 297, L. 1993, provided: "[This act] is effective on passage and approval." Approved April 9, 1993.

Part 2

Board of Medical Examiners

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

37-25-201. Powers and duties of the board. In addition to all other powers and duties conferred and imposed on the board by this chapter, the board shall:

(1) examine qualified applicants for a license to practice dietetics-nutrition, issue licenses to applicants who meet the requirements established by this chapter, and renew licenses as provided in 37-25-307; and

(2) adopt rules that set professional, practice, and ethical standards for licensed nutritionists and such other rules as may be necessary for the administration of this chapter.

History: En. Sec. 10, Ch. 529, L. 1987.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Oath defined, 1-1-201.

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Oaths, Title 1, ch. 6.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Power of agencies to issue subpoenas, 2-4-104.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Power of hearing officer to issue subpoenas, 2-4-611.

Public records, Title 2, ch. 6.

Preservation of records, Title 22, ch. 3, part 2.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.

Duty of Department to keep records, 37-1-101.

Duty of Department to provide facilities, 37-1-101.

Licensing investigation and review — record access, 37-1-135.

Disrupting meeting as disorderly conduct, 45-8-101.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-25-301. Scope of dietetic-nutrition practice. Only a nutritionist can provide the following services:

(1) assessing the nutrition needs of individuals and groups and determining resources and constraints in the practice setting;

(2) establishing priorities and objectives that meet nutritive needs and are consistent with available resources and constraints;

(3) providing nutrition counseling for any individual;

(4) developing, implementing, and managing nutrition care systems; and

(5) evaluating, adjusting, and maintaining appropriate standards of quality in food and nutrition services.

History: En. Sec. 3, Ch. 529, L. 1987.

37-25-302. Licensing requirements. (1) An applicant for licensure as a licensed nutritionist shall file a written application with the board and demonstrate to the board that he is registered by the commission.

(2) An applicant shall pay an application fee, set by the board.

History: En. Sec. 4, Ch. 529, L. 1987.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-25-303. Issuance of license — effective date. (1) Upon successful completion of the requirements in 37-25-302, an applicant must be issued a license attesting to the date and fact of licensure.

(2) The license is effective on the date of issuance and expires 1 year after that date.

History: En. Sec. 5, Ch. 529, L. 1987.

37-25-304. Exemptions from licensure requirements. This chapter does not prevent:

(1) a student or intern in an approved academic program or a paraprofessional with approved dietetic-nutrition training from engaging in the practice of dietetics-nutrition if a licensed nutritionist is available for direct supervision and if the student, intern, or paraprofessional does not represent himself to the public as a nutritionist;

(2) a licensed physician or nurse from engaging in the practice of dietetics-nutrition when it is incidental to the practice of his profession;

(3) a person licensed under any other law from engaging in the profession or business for which he is licensed if he does not represent himself to the public as a nutritionist;

(4) an educator or advisor employed by a nonprofit agency acceptable to the board or by an accredited degree-granting institution or an accredited elementary or secondary school from engaging in an activity within the scope of his salaried position;

(5) a person employed by or under contract with an agency of the state or federal government from discharging his official duty if he does not represent himself to the public as a nutritionist;

(6) a person from furnishing general nutritional information, including dissemination of literature, as to the use of food, food materials, or dietary supplements or from engaging in the explanation as to the use of foods or food products, including dietary supplements, in connection with the marketing and distribution of those products if he does not represent himself to the public as a nutritionist;

(7) a person from furnishing general nutrition information or disseminating literature if he does not represent himself to the public as a dietitian or a nutritionist; or

(8) a person from fulfilling state or federal regulations governing the delivery or provision of nutritional health services to hospitals or long-term care facilities if he does not represent himself to the public as a nutritionist.

History: En. Sec. 6, Ch. 529, L. 1987.

37-25-305. Representation to public as nutritionist — limitation on use of title. No person may represent himself to the public by any title, sign, or advertisement or description of services as a nutritionist or a licensed nutritionist unless he has been licensed under this chapter or has met the requirements of 37-25-102(10)(b).

History: En. Sec. 7, Ch. 529, L. 1987.

37-25-306. Reciprocity. A person licensed to practice dietetics-nutrition in another state with licensing requirements equivalent to or more stringent than those in 37-25-302 is entitled to a license to practice dietetics-nutrition in Montana.

History: En. Sec. 8, Ch. 529, L. 1987.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-25-307. Renewal of license — continuing education. (1) An application for renewal of license must be made annually on a date set by the board.

(2) A renewal license must be issued when the applicant submits proof that requirements for continuing education have been met and pays a renewal fee set by the board commensurate with costs.

(3) An additional fee may be imposed on applications for renewal received by the board more than 30 days after the annual renewal date.

History: En. Sec. 9, Ch. 529, L. 1987; amd. Sec. 1, Ch. 255, L. 1991.

37-25-308. Grounds for revocation, suspension, or refusal to renew license. The board may impose a fine or probationary conditions, suspend or revoke a license, or deny or refuse to renew a license if the licensee or applicant has:

(1) obtained a license by means of fraud, misrepresentation, or concealment of material facts;

(2) engaged in unprofessional conduct or gross incompetence as defined by rule of the board;

(3) been convicted of a crime of moral turpitude or a felony related to the practice of dietetics-nutrition; or

(4) violated an order or rule of the board.

History: En. Sec. 11, Ch. 529, L. 1987.

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of Director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

CHAPTER 26

NATUROPATHIC PHYSICIANS

Part 1 — General

37-26-101. Short title.
37-26-102. Legislative finding — purpose.
37-26-103. Definitions.

Part 2 — Board of Naturopathic Physicians

37-26-201. Powers and duties of board.
37-26-202. Board meetings.

Part 3 — Scope of Practice

37-26-301. Practice of naturopathic health care.
37-26-302. Exemptions.
37-26-303. Public health duties of naturopathic physicians.
37-26-304. Naturopathic childbirth attendance — certification for specialty practice — requirements.

Part 4 — Licensing

37-26-401. License required — titles restricted — enjoining unlawful practice.
37-26-402. Qualifications for licensure.
37-26-403. Application for licensure — examination — temporary license.
37-26-404. Licensure by endorsement.
37-26-405. Issuance of license.
37-26-406 and 37-26-407 reserved.
37-26-408. Denial, suspension, or revocation of license — grounds.
37-26-409. Denial, suspension, or revocation of license — procedure.
37-26-410. Reinstatement of license after period of suspension — revocation.
37-26-411 through 37-26-413 reserved.
37-26-414. Enforcement — penalty.

Part 1

General

37-26-101. Short title. This chapter may be cited as the "Naturopathic Health Care Practice Act".

History: En. Sec. 1, Ch. 306, L. 1991.

37-26-102. Legislative finding — purpose. (1) The legislature finds that a significant number of Montanans choose naturopathic medicine for their health care needs and declares that naturopathic medicine is a distinct health care profession that affects the public health, safety, and welfare and contributes to public freedom of choice in health care.

(2) The purpose of this chapter is to provide standards for the licensing and regulation of naturopathic physicians in order to protect the public health, safety, and welfare; to ensure that naturopathic health care by qualified naturopathic physicians is available to the people of Montana; and to provide a means of identifying qualified naturopathic physicians.

History: En. Sec. 2, Ch. 306, L. 1991.

37-26-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Approved naturopathic medical college" means a college and program granting the degree of doctor of naturopathy or naturopathic medicine that:

(a) is accredited by the council on naturopathic medical education or another accrediting agency recognized by the United States department of education;

(b) has the status of candidate for accreditation with the accrediting agency; or

(c) has been approved by the board after an investigation that determines that the college or program meets education standards equivalent to those established by the accrediting agency and complies with the board's rules, which must require as a minimum a 4-year, full-time resident program of academic and clinical study.

(2) "Board" means the alternative health care board established in 2-15-1840.

(3) "Department" means the department of commerce provided for in 2-15-1801.

(4) "Homeopathic preparations" means substances and drugs prepared according to the official Homeopathic Pharmacopoeia of the United States, which is the standard homeopathic text recognized by the United States food and drug administration.

(5) (a) "Minor surgery" means the use of:

(i) operative, electrical, or other methods for the surgical repair and care incidental to superficial lacerations and abrasions, superficial lesions, and the removal of foreign bodies located in the superficial tissues; and

(ii) antiseptics and local anesthetics in connection with the methods.

(b) Minor surgery does not include general or spinal anesthetics, major surgery, surgery of the body cavities, or specialized surgeries, such as plastic surgery, surgery involving the eyes, or surgery involving tendons, ligaments, nerves, or blood vessels.

(6) "Naturopathic childbirth attendance" means the specialty practice of natural childbirth by naturopathic physicians that includes the use of natural therapeutic substances, ophthalmic antibiotics, oxytocin (pitocin), and minor surgery, as set by board rules. The term does not include a forceps delivery, general or spinal anesthesia, or a caesarean section.

(7) "Naturopathic medicine", "naturopathic health care", or "naturopathy" means a system of primary health care practiced by naturopathic physicians for the prevention, diagnosis, and treatment of human health conditions, injury, and disease. Its purpose is to promote or restore health by the support and stimulation of the individual's inherent self-healing processes. This is accomplished through education of the patient by a naturopathic physician and through the use of natural therapies and therapeutic substances.

(8) "Naturopathic physical applications" means the therapeutic use by naturopathic physicians of the actions or devices of electrical muscle stimulation, galvanic, diathermy, ultrasound, ultraviolet light, constitutional hydrotherapy, and naturopathic manipulative therapy.

(9) "Naturopathic physician" means a person authorized and licensed to practice naturopathic health care under this chapter.

(10) "Topical drugs" means topical analgesics, anesthetics, antiseptics, scabicides, antifungals, and antibacterials.

History: En. Sec. 3, Ch. 306, L. 1991; amd. sec. 3(2), Ch. 524.

Part 2

Board of Naturopathic Physicians

37-26-201. Powers and duties of board. The board shall:

(1) adopt rules necessary or proper to administer and enforce this chapter;

(2) adopt rules that specify the scope of practice of naturopathic medicine stated in 37-26-301, that are consistent with the definition of naturopathic medicine provided in 37-26-103, and that are consistent with the education provided by approved naturopathic medical colleges;

(3) adopt rules prescribing the time, place, content, and passing requirements of the licensure examination, which may be composed of part or all of the national naturopathic physicians licensing examination;

(4) adopt rules that endorse equivalent licensure examinations of another state or territory of the United States, the District of Columbia, or a foreign country and that may include licensure by reciprocity;

(5) adopt rules that set nonrefundable fees, commensurate with costs, for application, examination, licensure, and other administrative services;

(6) approve naturopathic medical colleges as defined in 37-26-103;

(7) adopt rules for the investigation of complaints against naturopathic physicians, for hearings on complaints, and to impose disciplinary action against naturopathic physicians found to be in violation of this chapter;

(8) investigate individuals falsely claiming to be naturopathic physicians and act in cooperation with county attorneys to enforce the provisions of this chapter;

(9) adopt rules that establish, approve, and routinely review a continuing education curriculum and accreditation for naturopathic physicians that is required for license renewal;

(10) issue certificates of specialty practice;

(11) issue temporary licenses as provided for in 37-26-403; and

(12) adopt rules that, in the discretion of the board, appropriately restrict licenses to a limited scope of practice of naturopathic medicine, which may exclude the use of minor surgery or the legend drugs allowed under 37-26-301.

History: En. Sec. 10, Ch. 306, L. 1991; amd. Sec. 3, Ch. 314, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 314 in (5), before "fees", inserted "nonrefundable". Amendment effective April 12, 1993.

37-26-202. Board meetings. (1) The board shall meet at least once annually.

(2) Special meetings may be called by any two board members or the presiding officer.

(3) A majority of the board constitutes a quorum for the transaction of business.

History: En. Sec. 11, Ch. 306, L. 1991; amd. Sec. 4, Ch. 314, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 314 in (3) substituted "A majority of the board constitutes a quorum for the transaction of business" for "All members must be present in order to conduct board business"; and made minor changes in style. Amendment effective April 12, 1993.

Part 3

Scope of Practice

37-26-301. Practice of naturopathic health care. (1) Naturopathic physicians may practice naturopathic medicine as a limited practice of the healing arts as exempted in 37-3-103(1)(n), with the following restrictions. A naturopathic physician may not:

(a) prescribe, dispense, or administer any legend drug as defined in 50-31-301 except for whole gland thyroid; homeopathic preparations; the natural therapeutic substances, drugs, and therapies described in subsection (2); and oxytocin (pitocin), provided that the naturopathic physician may administer but may not prescribe or dispense oxytocin (pitocin);

(b) administer ionizing radioactive substances for therapeutic purposes;

(c) perform surgical procedures except those minor surgery procedures authorized by this chapter; or

(d) claim to practice any licensed health care profession or system of treatment other than naturopathic medicine unless holding a separate license in that profession.

(2) Naturopathic physicians may prescribe and administer for preventive and therapeutic purposes the following natural therapeutic substances, drugs, and therapies:

(a) food, food extracts, vitamins, minerals, enzymes, whole gland thyroid, botanical medicines, homeopathic preparations, and oxytocin (pitocin);

(b) topical drugs, health care counseling, nutritional counseling and dietary therapy, naturopathic physical applications, therapeutic devices, and nonprescription drugs; and

(c) barrier devices for contraception, naturopathic childbirth attendance, and minor surgery.

(3) Naturopathic physicians may perform or order for diagnostic purposes a physical or orificial examination, ultrasound, phlebotomy, clinical laboratory test or examination, physiological function test, and any other noninvasive diagnostic procedure commonly used by physicians in general practice and as authorized by 37-26-201(2).

(4) Except as provided by this subsection, it is unlawful for a naturopath to engage, directly or indirectly, in the dispensing of any drugs that a naturopath is authorized to prescribe by subsection (2). If the place where a naturopath maintains an office for the practice of naturopathy is more than 10 miles from a place of business that sells and dispenses the drugs a naturopath may prescribe under subsection (2), then, to the extent the drugs are not available within 10 miles of the naturopath's office, the naturopath may sell the drugs that are unavailable.

History: En. Sec. 4, Ch. 306, L. 1991; amd. Sec. 5, Ch. 314, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 314 in (1)(a), after "preparations", inserted "the natural therapeutic substances, drugs, and therapies described in subsection (2)"; and made minor changes in style. Amendment effective April 12, 1993.

37-26-302. Exemptions. (1) This chapter recognizes that many of the therapies used by naturopathic physicians, such as the use of nutritional supplements, herbs, foods, homeopathic preparations, and such physical forces as heat, cold, water, touch, and light, are not the exclusive privilege of naturopathic physicians, and their use, practice, prescription, or administration by persons not licensed to practice naturopathic medicine is not prohibited by this chapter.

(2) This chapter does not restrict or apply to the scope of practice of any other professions licensed, certified, or registered under the laws of this state.

History: En. Sec. 6, Ch. 306, L. 1991.

37-26-303. Public health duties of naturopathic physicians. Naturopathic physicians have the same authority and responsibility as other licensed physicians with regard to public health laws, reportable diseases and conditions, communicable disease control and prevention, recording of vital statistics, health and physical examinations, and local boards of health, except that the authority and responsibility are limited to activities consistent with the scope of practice described in this chapter.

History: En. Sec. 8, Ch. 306, L. 1991.

37-26-304. Naturopathic childbirth attendance — certification for specialty practice — requirements. (1) A naturopathic physician may not practice naturopathic childbirth attendance without first obtaining from the board a certificate of specialty practice. The board shall adopt rules setting forth the requirements to be met in order to certify naturopathic physicians for the specialty practice of naturopathic childbirth attendance.

(2) In order to be certified for the specialty practice of naturopathic childbirth attendance, a naturopathic physician shall:

(a) pass either a national standardized supplemental examination in naturopathic childbirth attendance provided by the national naturopathic profession licensing organization or another specialty examination approved by the board;

(b) complete a minimum of 100 hours in any one or in any combination of the following upon approval by the board:

(i) course work in naturopathic childbirth attendance;

(ii) an internship in naturopathic childbirth attendance; or

(iii) a preceptorship in naturopathic childbirth attendance; and

(c) have assisted in a minimum of 50 supervised births, including prenatal and postnatal care, under the direct supervision of a licensed naturopathic, medical, or osteopathic physician with specialty training in obstetrics or natural childbirth attendance. The 50 supervised births required under this subsection (c) must include 25 births that document the naturopathic physician as the primary birth attendant.

History: En. Sec. 7, Ch. 306, L. 1991.

Part 4
Licensing

37-26-401. License required — titles restricted — enjoining unlawful practice. (1) Except as provided in 37-26-302, a person may not practice naturopathy without a valid and current license issued by the board as provided in this chapter.

(2) (a) A naturopathic physician licensed under this chapter may use the prefix "Dr." or "doctor" as a title.

(b) Only a naturopathic physician licensed under this chapter may use any or all of the following titles or terms:

(i) "doctor of naturopathy", "doctor of naturopathic medicine", "naturopath", "naturopathic physician", and the abbreviation "N.D." when used to imply any of these titles; or

(ii) "naturopathic medicine", "naturopathic health care", "naturopathic", and "naturopathy".

(c) The titles and terms in subsection (2)(b) identify naturopathic physicians and are restricted to describing and identifying licensed practitioners and their practice. A person who uses these titles and terms to represent himself or his practice to the public without being licensed pursuant to this chapter is in violation of this chapter.

(3) A violation of this chapter may be enjoined by the district court on petition by the board.

History: En. Sec. 5, Ch. 306, L. 1991.

37-26-402. Qualifications for licensure. A person is qualified to be licensed to practice naturopathic medicine in Montana if he:

(1) is of good moral character as determined by the board;

(2) is a graduate of an approved naturopathic medical college; and

(3) has passed an examination prescribed or endorsed by the board for the licensure of naturopathic physicians.

History: En. Sec. 12, Ch. 306, L. 1991.

37-26-403. Application for licensure — examination — temporary license. (1) A person who desires a license to practice naturopathic medicine in Montana shall apply to the department in the manner and form prescribed by the board. The application must be accompanied by the license fees, the application fees, and the documents, affidavits, and certificates necessary to establish that the applicant possesses the qualifications prescribed by 37-26-402. The burden of proof is on the applicant, but the board may make an independent investigation to determine whether the applicant possesses the necessary qualifications and whether the applicant has committed unprofessional conduct that would be basis for licensure denial. At the board's request, the applicant shall provide necessary authorizations for the release of records and information pertinent to the board's investigation.

(2) A person who applies for licensure but who has not passed a licensure examination prescribed or endorsed by the board shall apply to the board for authorization to take the prescribed licensure examination. The application for examination must be accompanied by the examination fee. If the board finds that all other qualifications for licensure except that of examination have

been met, the board shall authorize the applicant to take the licensure examination.

(3) A person who has actively engaged in the practice of naturopathic medicine in Montana prior to April 1, 1991, and who is a graduate of an approved naturopathic medical college may continue to practice naturopathic medicine until the board reviews his qualifications if he applies to and receives from the department a temporary license by October 1, 1991. The department shall issue a temporary license to a qualified applicant. The board shall, within 6 months of October 1, 1991, review the qualifications of each temporary licensee and either authorize the department to issue a license to a person qualified under 37-26-402 or 37-26-404 or extend the temporary license for a term of no more than 1 year to allow the practitioner to pass the prescribed examination. A person who is not a graduate of an approved naturopathic medical college may not be granted a temporary license.

History: En. Sec. 13, Ch. 306, L. 1991.

37-26-404. Licensure by endorsement. The board may authorize the department to issue to an applicant a license by endorsement if the applicant produces evidence satisfactory to the board of:

(1) a valid license or certificate issued to the applicant on the basis of an examination by a naturopathic examining board under the laws of another state or territory of the United States, the District of Columbia, or a foreign country, whose licensing standards at the time the license or certificate was issued were, in the judgment and according to the rules of the board, acceptable for endorsement for granting a license to practice naturopathic medicine; or

(2) (a) an inactive license or other certificate of examination issued to or for the applicant by a naturopathic examining board under the laws of another state or territory of the United States, the District of Columbia, or a foreign country, whose examination standards at the time the license was granted or the examination was passed were acceptable for endorsement in the judgment and according to the rules of the board;

(b) the fact that the applicant has not been disciplined or had an inactive license suspended or revoked for malpractice;

(c) the fact that the applicant has been actively engaged in the practice of naturopathic medicine for at least 1 year in a state or territory of the United States, the District of Columbia, or a foreign country, that does not license naturopathic physicians;

(d) the fact that the applicant is a graduate of an approved naturopathic medical college; and

(e) the good moral character of the applicant.

History: En. Sec. 14, Ch. 306, L. 1991; amd. Sec. 6, Ch. 314, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 314 near beginning of (1), before "examining", inserted "naturopathic"; and made minor changes in style. Amendment effective April 12, 1993.

37-26-405. Issuance of license. If the board determines that an applicant possesses the qualifications required by 37-26-402, the department shall issue a license to the applicant to practice naturopathic medicine.

History: En. Sec. 15, Ch. 306, L. 1991.

37-26-406 and 37-26-407 reserved.

37-26-408. Denial, suspension, or revocation of license — grounds. The board may refuse to issue a license or may suspend or revoke a license issued pursuant to this chapter or take disciplinary action against licensees for one or more of the following causes:

(1) conviction, as shown by a certified copy of the record of the court, of a felony or a violation of any state or federal law regulating the possession, distribution, or use of any controlled substance, subject to Title 37, chapter 1, part 2;

(2) being adjudicated incompetent or seriously mentally ill;

(3) sustaining a physical or mental disability that renders further naturopathic practice dangerous to the public;

(4) habitual intemperance with alcohol or habitual addiction to the use of a controlled substance to such an extent as to incapacitate the person from the proper performance of professional duties;

(5) malpractice;

(6) engaging in dishonorable, unethical, or unprofessional conduct, as defined by the rules of the board, that may deceive, defraud, or harm the public;

(7) obtaining or attempting to obtain by fraudulent misrepresentation a license to practice naturopathy;

(8) advertising by means of knowingly false, misleading, or deceptive statements;

(9) advertising, practicing, or attempting to practice under a name other than the person's own;

(10) using any false, fraudulent, or forged statement or document or engaging in any fraudulent, deceitful, dishonest, or immoral practice, as defined by the rules of the board, in connection with the licensing requirements of this chapter;

(11) violation of a provision of this chapter or the rules adopted by the board.

History: En. Sec. 16, Ch. 306, L. 1991.

37-26-409. Denial, suspension, or revocation of license — procedure. (1) Upon receipt of a complaint alleging violation of this chapter or the rules of the board, the board shall investigate the complaint and, according to its findings and the board's rules, shall either dismiss the complaint or take appropriate action to enforce this chapter.

(2) (a) The board shall meet or hold a hearing as necessary at the time and place set pursuant to board rules. The board may continue the hearing from time to time as it determines necessary.

(b) At the hearing, the board must receive evidence upon the subject under consideration and shall accord the person against whom the complaint is filed a full and fair opportunity to be heard in his defense.

(3) After consideration, the board shall adopt a resolution finding that the licensee has either violated or not violated the provisions of this chapter or the rules of the board.

(4) If the board finds that a violation has not occurred, the board shall dismiss the complaint. If the board finds that a violation has occurred, it shall:

(a) revoke his license;

(b) suspend his right to practice naturopathy for a period not to exceed 1 year;

(c) suspend its judgment of revocation upon terms and conditions it determines;

(d) place him on probation; or

(e) take other disciplinary action as provided by board rules.

History: En. Sec. 17, Ch. 306, L. 1991.

37-26-410. Reinstatement of license after period of suspension — revocation. (1) Upon the expiration of the term of the suspension, the board may reinstate a license if the suspended licensee furnishes the board with satisfactory evidence that he is then of good moral character and conduct; is restored to good health, if applicable; and has not practiced naturopathy in the state during the term of suspension.

(2) If the board is not satisfied that the licensee is then of good moral character and conduct or restored to good health or if the evidence shows that he has practiced naturopathy in this state during the term of suspension, the board may, after notice and hearing, revoke the license.

History: En. Sec. 18, Ch. 306, L. 1991.

37-26-411 through 37-26-413 reserved.

37-26-414. Enforcement — penalty. (1) A county attorney shall prosecute a person charged with violation of any of the provisions of this chapter.

(2) A person who violates any of the provisions of this chapter is guilty of a misdemeanor and, upon conviction, is punishable by a fine not exceeding $500 or by imprisonment in the county jail for a term not to exceed 6 months, or both.

History: En. Sec. 19, Ch. 306, L. 1991.

CHAPTER 27

DIRECT-ENTRY MIDWIFERY

Part 1 — General

37-27-101. Short title.
37-27-102. Purpose.
37-27-103. Definitions.
37-27-104. Exemptions.
37-27-105. General powers and duties of board — rulemaking authority.
37-27-106 through 37-27-110 reserved.
37-27-111. Parents' rights regarding birth of baby.

Part 2 — Licensure

37-27-201. Qualifications of applicants for license — educational and practical experience requirements.
37-27-202. Examination — preparation — requirements.
37-27-203. Examination — exemption.
37-27-204 reserved.
37-27-205. Provisional license — apprentice license.
37-27-206 through 37-27-209 reserved.

37-27-210. Fees.
37-27-211 reserved.
37-27-212. Title restricted — enjoining unlawful practice.
37-27-213. Denial, suspension, revocation, or refusal to renew license — grounds.
37-27-214 and 37-27-215 reserved.
37-27-216. Reciprocity.

Part 3 — Regulation of Practice

37-27-301. Unlawful to practice without license.
37-27-302. Administration of prescription drugs prohibited — exceptions.
37-27-303. Operative and surgical procedures prohibited — exception.
37-27-304 through 37-27-309 reserved.
37-27-310. Privileged communications — exceptions.
37-27-311. Informed consent.
37-27-312. Screening procedures.
37-27-313 and 37-27-314 reserved.
37-27-315. Physician consultation advised.
37-27-316 through 37-27-319 reserved.
37-27-320. Reports — failure to report.
37-27-321. Filing of birth certificate.
37-27-322 through 37-27-324 reserved.
37-27-325. Violation — penalties — injunction — manner of charging violation.

Chapter Cross-References

Limits on liability of health care provider in emergency situations, 27-1-734.

Report of fetal death that occurs outside licensed medical facility, 46-4-114.

Part 1

General

37-27-101. Short title. This chapter may be cited as the "Direct-Entry Midwifery Licensing Act".

History: En. Sec. 1, Ch. 550, L. 1991.

37-27-102. Purpose. The legislature finds and declares that because the practice of direct-entry midwifery affects the lives of the people of this state and because some Montanans may exercise their right to give birth where and with whom they choose, it is the purpose of this chapter to provide for the common good by regulating and ensuring the qualified and professional practice of direct-entry midwifery.

History: En. Sec. 2, Ch. 550, L. 1991.

37-27-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Apprentice" means a person who is working under the supervision of a licensed direct-entry midwife and is seeking licensure as a direct-entry midwife under this chapter.

(2) "Board" means the alternative health care board established in 2-15-1840.

(3) "Continuous care" means care provided for one person from the initial history-taking interview through monthly prenatal, intrapartum, and postpartum periods.

(4) "Direct-entry midwife" means a person who advises, attends, or assists a woman during pregnancy, labor, natural childbirth, or the postpartum period.

(5) "Licensee" means a person authorized by this chapter to practice direct-entry midwifery.

(6) "Postpartum period" means the period up to 6 weeks following birth.

(7) "Practice of direct-entry midwifery" means the advising, attending, or assisting of a woman during pregnancy, labor, natural childbirth, or the postpartum period.

History: En. Sec. 3, Ch. 550, L. 1991; amd. Sec. 3, Ch. 524, L. 1991; amd. Sec. 59, Ch. 10, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 10 deleted definition of Department.

37-27-104. Exemptions. This chapter does not limit or regulate the practice of a licensed physician, certified nurse-midwife, or licensed basic or advanced emergency medical technician. The practice of direct-entry midwifery does not constitute the practice of medicine, certified nurse-midwifery, or emergency medical care to the extent that a direct-entry midwife advises, attends, or assists a woman during pregnancy, labor, natural childbirth, or the postpartum period when the pregnancy is not a high-risk pregnancy.

History: En. Sec. 4, Ch. 550, L. 1991.

37-27-105. General powers and duties of board — rulemaking authority. (1) The board shall:

(a) meet at least once annually, and at other times as agreed upon, to elect officers and to perform the duties described in this section; and

(b) administer oaths, take affidavits, summon witnesses, and take testimony as to matters within the scope of the board's duties.

(2) The board shall have the authority to administer and enforce all the powers and duties granted statutorily or adopted administratively.

(3) The board shall adopt rules to administer this chapter. The rules must include but are not limited to:

(a) the development of a license application and examination, criteria for and grading of examinations, and establishment of examination and license fees commensurate with actual costs;

(b) the issuance of a provisional license to midwives who filed the affidavit required by section 2, Chapter 493, Laws of 1989;

(c) the establishment of criteria for minimum educational, apprenticeship, and clinical requirements that, at a minimum, meet the standards established in 37-27-201;

(d) the development of eligibility criteria for client screening by direct-entry midwives in order to achieve the goal of providing midwifery services to women during low-risk pregnancies;

(e) the development of procedures for the issuance, renewal, suspension, revocation, and reciprocity of licenses;

(f) the adoption of disciplinary standards for licensees;

(g) the establishment of investigatory and hearing procedures for processing complaints received by the board;

(h) the establishment of continuing education requirements of at least 14 hours annually for license renewal for direct-entry midwives;

(i) the development of standardized informed consent and reporting forms;

(j) the adoption of ethical standards for licensed direct-entry midwives;

(k) the adoption of supporting documentation requirements for primary birth attendants; and

(l) the establishment of criteria limiting an apprenticeship that, at a minimum, meets the standards established in 37-27-201.

History: En. Sec. 6, Ch. 550, L. 1991.

37-27-106 through 37-27-110 reserved.

37-27-111. Parents' rights regarding birth of baby. Except as otherwise provided by law, parents have a right to give birth where and with whom they choose.

History: En. Sec. 1, Ch. 493, L. 1989. Sec. 37-75-101, MCA 1989; redes. 37-27-111 by Code Commissioner, 1991.

Part 2

Licensure

37-27-201. Qualifications of applicants for license — educational and practical experience requirements. To be eligible for a license as a direct-entry midwife, an applicant:

(1) must possess a high school diploma or its equivalent;

(2) must be of good moral character and be at least 21 years of age;

(3) shall satisfactorily complete educational requirements in pregnancy and natural childbirth, approved by the board, which must include but are not limited to the following:

(a) provision of care during the antepartum, intrapartum, postpartum, and newborn period;

(b) parenting education for prepared childbirth;

(c) observation skills;

(d) aseptic techniques;

(e) management of birth and immediate care of the mother and the newborn;

(f) recognition of early signs of possible abnormalities;

(g) recognition and management of emergency situations;

(h) special requirements for home birth;

(i) intramuscular and subcutaneous injections;

(j) suturing necessary for episiotomy repair;

(k) recognition of communicable diseases affecting the pregnancy, birth, newborn, and postpartum periods;

(l) assessment skills; and

(m) the use and administration of drugs authorized in 37-27-302;

(4) shall acquire practical experience, which may be attained in a home, clinic, or hospital setting. Practical experience attained in a hospital does not constitute training or supervision by the hospital, nor may a hospital be required to provide such practical experience. At a minimum, this experience

must include the following types and numbers of experiences acquired through an apprenticeship or other supervisory setting:

(a) provision of 100 prenatal examinations;

(b) observation of 40 births; and

(c) participation as the primary birth attendant at 25 births, 15 of which included continuous care, as evidenced by:

(i) birth certificates from Montana or another state;

(ii) a signed affidavit from the birthing mother; or

(iii) documented records from the person who supervised the births.

(5) shall file documentation with the board that the applicant has been certified by the American heart association or American red cross to perform adult and infant cardiopulmonary resuscitation. Certification must be current at the time of application and remain valid throughout the license period.

History: En. Sec. 7, Ch. 550, L. 1991; amd. Sec. 7, Ch. 314, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 314 in (1) substituted "must possess a high school diploma or its equivalent" for "must be a high school graduate"; in (4)(c), after "evidenced by", substituted subsections (i) through (iii) regarding evidence in the form of birth certificates, affidavits, or records for "signing the birth certificate as the primary birth attendant". Amendment effective April 12, 1993.

37-27-202. Examination — preparation — requirements. (1) An examination for a license to practice direct-entry midwifery must be prepared by a certified nurse-midwife designated by the board in consultation with the physician on the board.

(2) Examinations must be conducted once each year, be fair and impartial, and be sufficiently comprehensive to adequately test the applicant's competence and ability.

(3) In order to be licensed, a person shall attain a passing grade on the examination, as set by the board.

(4) A person who fails to achieve a passing grade on the examination may not engage in the practice of midwifery.

History: En. Sec. 10, Ch. 550, L. 1991; amd. Sec. 8, Ch. 314, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 314 substituted (3) regarding passing grade for licensure for former language that read: "A person must attain a grade of at least 70% to pass the examination." Amendment effective April 12, 1993.

37-27-203. Examination — exemption. (1) Except as provided in subsection (4), an applicant for a license as a direct-entry midwife shall pass a qualifying, written examination, prescribed by the board, that is designed to test knowledge of theory regarding pregnancy and childbirth and to test clinical judgment in midwifery management. If considered necessary, an oral interview may be conducted in addition to the written examination to determine the fitness of the applicant to practice as a direct-entry midwife.

(2) Before an applicant may take the examination, the applicant shall demonstrate to the board that the educational and practical experience requirements in 37-27-201(3) and (4) have been met.

(3) An applicant is exempt from the educational and practical experience requirements of 37-27-201(3) and (4) if the applicant has:

(a) satisfactorily completed the first examination given by the board following July 1, 1991; and

(b) filed supporting documentation, as required by the board by rule, certifying that the applicant has served as the primary birth attendant, providing continuous care at no less than 75 births within the 7 years prior to July 1, 1991, as verified by birth certificates from Montana or another state, a signed affidavit from the birthing mother, or documented records from the midwife.

(4) Upon payment of the license fee established by the board, a nurse-midwife certified pursuant to 37-8-409 is exempt from the requirements of 37-27-201 and this section and may be licensed as a direct-entry midwife.

History: En. Sec. 8, Ch. 550, L. 1991; amd. Sec. 9, Ch. 314, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 314 in (2) and introductory clause of (3) substituted "37-27-201(3) and (4)" for "37-27-201(2) and (3)". Amendment effective April 12, 1993.

37-27-204 reserved.

37-27-205. Provisional license — apprentice license. (1) Upon payment of a $200 fee to the department, the board may grant a provisional direct-entry midwife license only to a person who filed an affidavit required by section 2, Chapter 493, Laws of 1989.

(2) The provisional license is valid until the issuance of grades for the first examination administered pursuant to 37-27-202.

(3) Upon payment of a $200 fee to the department, the board may grant an apprentice direct-entry midwife license to a person who:

(a) is working under the personal supervision of a licensed direct-entry midwife, a certified nurse-midwife, a physician licensed under Title 37, chapter 3, or a licensed naturopathic physician who is certified for the specialty practice of naturopathic childbirth attendance; and

(b) is seeking licensure as a direct-entry midwife under this chapter.

(4) An apprentice direct-entry midwife license is valid for 1 year and must be renewed annually, with a limit of four renewals.

History: En. Sec. 9, Ch. 550, L. 1991; amd. Sec. 10, Ch. 314, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 314 at end of (3)(a) inserted "or a licensed naturopathic physician who is certified for the specialty practice of naturopathic childbirth attendance"; and made minor changes in style. Amendment effective April 12, 1993.

37-27-206 through 37-27-209 reserved.

37-27-210. Fees. (1) An applicant for a direct-entry midwife license shall, upon submitting an application to the board, pay an application fee set by the board, commensurate with costs.

(2) An applicant required to take an examination shall, before commencement of the examination, pay an examination fee set by the board, commensurate with costs.

(3) Before a license may be issued or renewed, an applicant shall pay a fee set by the board, commensurate with costs.

(4) Subject to 37-1-101(6), money paid for application, examination, license, and license renewal fees must be deposited in the state special revenue fund for use by the board.

(5) Fees are nonrefundable.

History: En. Sec. 13, Ch. 550, L. 1991; amd. Sec. 11, Ch. 314, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 314 inserted (5) regarding nonrefundability of fees. Amendment effective April 12, 1993.

37-27-211 reserved.

37-27-212. Title restricted — enjoining unlawful practice. (1) A direct-entry midwife licensed under this chapter may use the term "licensed midwife" or "direct-entry midwife" as a title.

(2) Only a direct-entry midwife licensed under this chapter may use the title "licensed midwife" or "direct-entry midwife".

(3) The terms and titles in subsections (1) and (2) identify direct-entry midwives and are restricted to describing and identifying licensed practitioners and their practice. A person who uses these terms and titles to represent the person or the person's practice to the public without being licensed pursuant to this chapter is in violation of this chapter.

(4) A violation of this chapter may be enjoined by the district court on petition by the board.

History: En. Sec. 12, Ch. 314, L. 1993.

Compiler's Comments

Effective Date: Section 14, Ch. 314, L. 1993, provided: "[This act] is effective on passage and approval." Approved April 12, 1993.

37-27-213. Denial, suspension, revocation, or refusal to renew license — grounds. (1) The board, after notice and hearing, may reprimand a licensee or deny, suspend, revoke, or refuse to renew the license of a licensee who:

(a) is using alcohol or other drugs to the point that job performance is impaired;

(b) is guilty of immoral or unprofessional conduct as defined by board rule;

(c) is guilty of gross negligence in practicing direct-entry midwifery;

(d) has obtained or attempted to obtain licensure by fraud or material misrepresentation;

(e) is guilty of conduct detrimental to the best interests of the public; or

(f) has violated any provision of this chapter or a rule adopted by the board.

(2) The board may impose an administrative fine of not more than $500 per incident for any violation that could result in the suspension or revocation of a direct-entry midwife license. A fine collected under this subsection must be deposited in the state general fund.

History: En. Sec. 14, Ch. 550, L. 1991.

37-27-214 and 37-27-215 reserved.

37-27-216. Reciprocity. Upon payment of the license fee provided for in 37-27-210, the board may grant a license to a person who, at the time of application, is licensed or certified as a midwife in another state if the board determines that the licensing requirements of that state are equal to or exceed the requirements of this chapter and if the other state extends similar privileges to direct-entry midwives licensed under this chapter.

History: En. Sec. 16, Ch. 550, L. 1991.

Part 3
Regulation of Practice

37-27-301. Unlawful to practice without license. It is unlawful for a person to practice direct-entry midwifery in this state without first obtaining a license under this chapter.

History: En. Sec. 15, Ch. 550, L. 1991.

37-27-302. Administration of prescription drugs prohibited — exceptions. A licensed direct-entry midwife may not dispense or administer prescription drugs other than newborn vitamin K (oral or intramuscular preparations), pitocin (intramuscular) postpartum, xylocaine (subcutaneous), and, in accordance with Rule 16.24.215, Administrative Rules of Montana, prophylactic eye agents to newborn infants. These drugs may be administered only if prescribed by a physician.

History: En. Sec. 11, Ch. 550, L. 1991.

37-27-303. Operative and surgical procedures prohibited — exception. A licensed direct-entry midwife may not perform any operative or surgical procedures except for an episiotomy and simple surgical repair of an episiotomy or simple second-degree lacerations.

History: En. Sec. 12, Ch. 550, L. 1991.

37-27-304 through 37-27-309 reserved.

37-27-310. Privileged communications — exceptions. A licensee may not disclose any information acquired from clients during consultation in a professional capacity except:

(1) with the written consent of the client or, in the case of the client's death or mental incapacity, with the written consent of the client's personal representative or guardian;

(2) that the licensee need not treat as confidential a communication otherwise confidential that reveals the contemplation of a crime by the client or any other person or that in the licensee's professional opinion reveals a threat of imminent harm to the client or others;

(3) that if the client is a minor and information acquired by the licensee indicates that the client was the victim of a crime, the licensee may be required to testify fully in relation to the information in any investigation, trial, or other legal proceeding in which the commission of the crime is the subject of inquiry;

(4) that if the client or the client's personal representative or guardian brings an action against a licensee for a claim arising out of the client's interaction with the direct-entry midwife, the client is considered to have waived any privilege;

(5) to the extent that the privilege is otherwise waived by the client;

(6) when the client is seeking emergency medical treatment and the client's history is requested by the attending medical professional; and

(7) as may otherwise be required by law.

History: En. Sec. 17, Ch. 550, L. 1991.

37-27-311. Informed consent. (1) Prior to accepting a woman for care, a licensed direct-entry midwife shall first obtain written, informed consent from the woman.

(2) Informed consent must be evidenced by a written statement, in a form prescribed by the board and signed by the direct-entry midwife and the woman to whom care is to be given, in which the direct-entry midwife certifies that full disclosure has been made and acknowledged by the woman on the following:

(a) the direct-entry midwife's educational background;

(b) the nature and scope of the care to be given, including the possibility of and procedure for transport of the patient to a hospital;

(c) the available alternatives to direct-entry midwifery care;

(d) a description of the risks of home birth, primarily those conditions that may arise during delivery;

(e) the fact that the patient has been advised to consult with a physician at least twice during the pregnancy;

(f) whether the midwifery services provided are located more than 50 miles from the nearest hospital; and

(g) that a health care provider's liability in rendering care or assistance in good faith to a patient of a direct-entry midwife in an emergency situation is limited to damages caused by gross negligence or by willful or wanton acts or omissions.

History: En. Sec. 18, Ch. 550, L. 1991.

37-27-312. Screening procedures. In addition to meeting the eligibility criteria for client screening established by the board pursuant to 37-27-105, a direct-entry midwife shall recommend that patients secure the following services by an appropriate health care provider:

(1) the standard serological test as defined in 50-19-101(2) for women seeking prenatal care;

(2) screening for hepatitis B and, when appropriate, human immunodeficiency virus;

(3) maternal serum alpha-fetoprotein test and ultrasound, upon request;

(4) Rh antibody and glucose screening at 28 weeks' gestation, upon request;

(5) nonstress testing by a fetal monitor of a fetus at greater than 42 ½ weeks' gestation or if other reasons indicate the testing;

(6) screening for phenylketonuria;

(7) Rh screening of the infant for RhoGAM treatment if the mother is Rh negative; and

(8) screening for premature labor and other risk factors.

History: En. Sec. 20, Ch. 550, L. 1991.

37-27-313 and 37-27-314 reserved.

37-27-315. Physician consultation advised. A licensed direct-entry midwife shall advise all women accepted for midwifery care to consult with a physician or certified nurse-midwife at least twice during the pregnancy.

History: En. Sec. 21, Ch. 550, L. 1991.

37-27-316 through 37-27-319 reserved.

37-27-320. Reports — failure to report. (1) A licensed direct-entry midwife shall submit semiannually to the board, on forms supplied by the board, a summary report on each patient given care. The report must include vital statistics on each patient and information on the procedures and scope of care administered, including any transport of the patient to a hospital and physician referrals, but may not include information disclosing the identity of the patient.

(2) A licensed direct-entry midwife shall report within 72 hours to the board and to the department of health and environmental sciences any maternal, fetal, or neonatal mortality or morbidity in patients for whom care has been given.

(3) Failure of a direct-entry midwife to submit required reports constitutes grounds to deny renewal of a license.

History: En. Sec. 19, Ch. 550, L. 1991.

37-27-321. Filing of birth certificate. (1) When a birth occurs with a licensed direct-entry midwife in attendance, the direct-entry midwife shall prepare and file a birth certificate, as required by 50-15-201, with the department of health and environmental sciences within 30 days of the birth of the newborn.

(2) Failure of a direct-entry midwife to prepare and file the birth certificate constitutes grounds for the suspension or revocation of a license granted under this chapter.

History: En. Sec. 22, Ch. 550, L. 1991.

37-27-322 through 37-27-324 reserved.

37-27-325. Violation — penalties — injunction — manner of charging violation. (1) A person who violates any provision of this chapter or any rule adopted pursuant to this chapter is guilty of a misdemeanor and is punishable by a fine not to exceed $500, by imprisonment in the county jail for a term of not more than 6 months, or both.

(2) Notwithstanding any other provisions of this chapter, the board may maintain an action to enjoin a person from engaging in the practice of direct-entry midwifery until a license to practice direct-entry midwifery is obtained. A person who has been enjoined and who violates the injunction is punishable for contempt of court. The injunction does not relieve the person practicing direct-entry midwifery without a license from criminal prosecution. The remedy by injunction is in addition to remedies provided for criminal prosecution of the offender. In charging a person in a complaint for injunction or in an affidavit, information, or indictment with a violation of law by practicing direct-entry midwifery without a license, it is sufficient to charge that the person did, on a certain day and in a certain county, engage in the practice of direct-entry midwifery while not having a license to do so, without averring further or more particular facts concerning the violation.

History: En. Sec. 23, Ch. 550, L. 1991.

CHAPTER 28

RESPIRATORY CARE PRACTITIONERS

Part 1 — General

37-28-101. Findings — purpose.
37-28-102. Definitions.
37-28-103. Board meetings — procedure — seal.
37-28-104. Board powers and duties.

Part 2 — Licensure

37-28-201. License required — exceptions — respiratory care not the practice of medicine.
37-28-202. Licensing requirements — examination — fees.
37-28-203. Renewal of license — application and fee.
37-28-204 and 37-28-205 reserved.
37-28-206. Temporary permit.
37-28-207 through 37-28-209 reserved.
37-28-210. Revocation, suspension, or refusal to renew license.

Part 3 — Miscellaneous

37-28-301. Duty to report violations — immunity from liability.
37-28-302. Penalty.
37-28-303 and 37-28-304 reserved.
37-28-305. Deposit of fees.

Part 1
General

37-28-101. Findings — purpose. The legislature finds and declares that the practice of respiratory care in the state affects the public health, safety, and welfare. To protect the public from the unqualified practice of respiratory care or unprofessional conduct by qualified practitioners, respiratory care is subject to regulation and control. The purpose of this chapter is to regulate the practice of respiratory care. The legislature recognizes that the practice of respiratory care is a dynamic and changing art and science that is continually evolving to include new ideas and more sophisticated techniques in patient care.

History: **En. Sec. 1, Ch. 532, L. 1991.**

37-28-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of respiratory care practitioners established in 2-15-1860.

(2) "Qualified medical direction" means the direction of:

(a) a medical director of an inpatient or outpatient respiratory care service, a respiratory care department, or a home-care agency; or

(b) a licensed physician with a special interest and knowledge about the diagnosis and treatment of respiratory problems.

(3) (a) "Respiratory care" means the care provided by a member of the allied health profession responsible for the treatment, management, diagnos-

tic testing, and control of patients with deficiencies and abnormalities associated with the cardiopulmonary system. The term includes but is not limited to:

(i) administration of pharmacological, diagnostic, and therapeutic agents related to respiratory care procedures that are necessary to implement a treatment, disease prevention, pulmonary rehabilitative, or diagnostic regimen prescribed by a physician;

(ii) transcription and implementation of the written or verbal orders of a physician regarding the practice of respiratory care;

(iii) observation and monitoring of a patient's signs and symptoms, general behavior, and physical response to respiratory care treatment and diagnostic testing, including determination of abnormal characteristics;

(iv) implementation of respiratory care protocols pursuant to a prescription by a physician; and

(v) initiation of emergency procedures prescribed by board rules.

(b) Respiratory care is not limited to a hospital setting but must be performed pursuant to a physician's order and under qualified medical direction. The term includes inhalation and respiratory therapy.

(4) "Respiratory care practitioner" means a person who has the knowledge and skill necessary to administer respiratory care and who is licensed under the provisions of part 2 of this chapter.

(5) "Student respiratory care practitioner" means a person:

(a) enrolled in a respiratory care educational program recognized by the joint review committee for respiratory therapy education and the American medical association's committee on allied health education and accreditation, or their successors;

(b) permitted to provide respiratory care under clinical supervision; and

(c) identified as a student respiratory care practitioner or "SRCP".

History: En. Sec. 2, Ch. 532, L. 1991.

37-28-103. Board meetings — procedure — seal. (1) The board shall meet at least once a year and shall elect annually a president, vice president, and secretary-treasurer from its membership. The board may convene at the request of the president or at other times the board determines necessary to transact its business.

(2) The board shall adopt a seal by which the board may authenticate its documents.

History: En. Sec. 4, Ch. 532, L. 1991.

37-28-104. Board powers and duties. (1) The board shall:

(a) examine, license, grant temporary permits, and renew the licenses or permits of duly qualified applicants;

(b) establish examinations and passing scores for licensure under 37-28-202;

(c) adopt and implement rules for continuing education requirements to ensure the quality of respiratory care.

(2) The board may:

(a) adopt rules necessary to implement the provisions of this chapter; and

(b) establish relicensing requirements and procedures that the board considers appropriate.

History: En. Sec. 5, Ch. 532, L. 1991.

Part 2
Licensure

37-28-201. License required — exceptions — respiratory care not the practice of medicine. (1) Except as otherwise provided in this chapter, a person may not practice respiratory care or represent himself to be a respiratory care practitioner unless he is licensed or granted a temporary permit under the provisions of 37-28-201 through 37-28-203 and 37-28-206.

(2) This chapter does not prohibit:

(a) the practice of respiratory care that is an integral part of study by a student respiratory care practitioner;

(b) self-care by a patient or the gratuitous care by a friend or family member who does not hold himself out to be a respiratory care practitioner; or

(c) respiratory care rendered in the course of an emergency.

(3) Nothing in this chapter is intended to limit, preclude, or interfere with the practice of other persons and health care providers licensed by the appropriate agencies of the state of Montana.

(4) Nothing in this chapter may be construed to permit the practice of medicine.

History: En. Sec. 6, Ch. 532, L. 1991.

37-28-202. Licensing requirements — examination — fees. (1) To be eligible for licensure by the board as a respiratory care practitioner, the applicant shall:

(a) submit to the board an application fee in an amount established by the board and a written application on a form provided by the board demonstrating that the applicant has completed:

(i) high school or the equivalent; and

(ii) a respiratory care educational program accredited or provisionally accredited by the American medical association's committee on allied health education and accreditation in collaboration with the joint review committee for respiratory therapy education or their successor organizations; and

(b) pass an examination prescribed by the board, unless the examination requirement is waived under subsection (2). The board may use the entry-level examination written by the national board for respiratory care or another examination that satisfies the standards of the national commission for health certifying agencies or the commission's equivalent.

(2) The board may issue a license to practice respiratory care to an applicant without requiring him to pass an examination if the applicant:

(a) is currently licensed to practice respiratory care under the laws of another state, territory, or country if the board considers the qualifications for licensure to be equivalent to those required in this state; or

(b) holds credentials, conferred by the national board for respiratory care, as a certified respiratory therapy technician or a registered respiratory therapist and affirms under oath that his credentials have not been suspended or revoked.

(3) A person holding a license to practice respiratory care in this state may use the title "respiratory care practitioner" and the abbreviation "RCP".

History: En. Sec. 7, Ch. 532, L. 1991.

37-28-203. Renewal of license — application and fee. (1) A respiratory care practitioner's license expires annually on May 1.

(2) A licensee may renew a license by:

(a) filing an application with the board on a form approved by the board;

(b) paying a renewal fee in an amount established by the board; and

(c) documenting the completion of the continuing education requirements prescribed by the board.

(3) An application for renewal of a license made within 90 days after expiration of the license is timely, and the rights and privileges of the applicant remain in effect during that period.

History: En. Sec. 8, Ch. 532, L. 1991; amd. Sec. 1, Ch. 392, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 392 at end of (1) substituted "annually on May 1" for "1 year from the date of issuance"; and made minor changes in style. Amendment effective April 19, 1993.

Transition: Section 4, Ch. 392, L. 1993, provided: "All licenses subject to renewal under [this act] must be renewed on May 1, 1993. The amount of the renewal fee to be assessed each licensee must be prorated to correspond to the time period of licensure. A license scheduled to expire prior to May 1, 1993, is valid until May 1, 1993."

37-28-204 and 37-28-205 reserved.

37-28-206. Temporary permit. (1) The board may issue a temporary permit to practice respiratory care for a period of 1 year, pending receipt of an application for licensure and upon payment of a temporary permit fee in an amount established by the board. To receive the permit, the applicant shall demonstrate in writing, confirmed by oath, that the applicant:

(a) has applied for licensure by reciprocity pursuant to 37-28-202(2). If the board considers the application and denies it, the temporary permit shall lapse.

(b) has taken the examination for licensure and is awaiting the results; or

(c) is a student respiratory care practitioner who expects to graduate within 30 calendar days of application for a license or who applies for a license within 6 months after the person has graduated.

(2) Upon expiration of the permit and payment of an additional fee in an amount established by the board, the board may issue a permit for an additional period not to exceed 1 year pending reexamination or compliance with the provisions of 37-28-202.

(3) An applicant who reapplies for a temporary permit after abandoning a previous application is not entitled to a permit.

History: En. Sec. 9, Ch. 532, L. 1991; amd. Sec. 2, Ch. 392, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 392 at end of (1)(c) inserted "for a license or who applies for a license within 6 months after the person has graduated"; and made minor changes in style. Amendment effective April 19, 1993.

Transition: Section 4, Ch. 392, L. 1993, provided: "All licenses subject to renewal under [this act] must be renewed on May 1, 1993. The amount of the renewal fee to be assessed each licensee must be prorated to correspond to the time period of licensure. A license scheduled to expire prior to May 1, 1993, is valid until May 1, 1993."

37-28-207 through 37-28-209 reserved.

37-28-210. Revocation, suspension, or refusal to renew license. The board may, after notice and hearing, revoke, suspend, or refuse to issue a license or permit; refuse to renew a license to practice respiratory care; or take other appropriate disciplinary action if the board finds that an applicant or respiratory care practitioner:

(1) is guilty of fraud or material misrepresentation in obtaining or attempting to obtain a license or renew a license to practice respiratory care;

(2) is guilty of gross negligence, incompetency, or misconduct in the practice of respiratory care;

(3) is habitually intemperate in the use of narcotic drugs, alcohol, or any other drug or substance that impairs the user physically or mentally;

(4) has obtained, possessed, used, or distributed illegal drugs or narcotics;

(5) is guilty of unprofessional conduct as defined by the board or is guilty of moral turpitude;

(6) has practiced respiratory care after his license or permit has expired or been suspended or revoked;

(7) has practiced respiratory care under cover of any permit or license illegally or fraudulently obtained or issued; or

(8) has aided or abetted others in the violation of any provision of this section or the rules adopted under this section.

History: En. Sec. 10, Ch. 532, L. 1991.

Part 3
Miscellaneous

37-28-301. Duty to report violations — immunity from liability. (1) Notwithstanding any provision of state law regarding the confidentiality of health care information, a respiratory care practitioner shall report to the board any information that appears to show that another respiratory care practitioner is:

(a) mentally or physically unable to engage safely in the practice of respiratory care; or

(b) guilty of any act, omission, or condition that is grounds for disciplinary action under 37-28-210.

(2) There is no liability on the part of a respiratory care practitioner and no cause of action may arise against a respiratory care practitioner who in good faith provides information to the board as required by subsection (1).

History: En. Sec. 11, Ch. 532, L. 1991.

37-28-302. Penalty. A person convicted of violating any provision of this chapter, is guilty of a misdemeanor and shall be fined an amount not to exceed $500, or shall be imprisoned in a county jail for a term not to exceed 6 months, or both.

History: En. Sec. 12, Ch. 532, L. 1991.

37-28-303 and 37-28-304 reserved.

37-28-305. Deposit of fees. All fees and money received by the department must be deposited in the state special revenue fund for the board's use subject to 37-1-101(6).

History: **En. Sec. 13, Ch. 532, L. 1991.**

CHAPTER 29

DENTURITRY

Part 1 — General

37-29-101. Short title.
37-29-102. Definitions.
37-29-103. Association with dentists permitted.
37-29-104. Health insurance policies to include denturist services.
37-29-105. Applicability of other law.

Part 2 — Board of Dentistry

37-29-201. Board powers and duties.
37-29-202. Repealed.
37-29-203. Repealed.

Part 3 — Licensing

37-29-301. License to practice required.
37-29-302. Exceptions.
37-29-303. Application for license.
37-29-304. Applications and fees.
37-29-305. Examinations.
37-29-306. Licensing.
37-29-307 through 37-29-310 reserved.
37-29-311. Suspension or revocation of license.
37-29-312. Revocation of license stays eligibility.
37-29-313. Renewal or reinstatement of license.
37-29-314 through 37-29-320 reserved.
37-29-321. Judicial review of board action.

Part 4 — Regulation

37-29-401. Standards of conduct and practice.
37-29-402. Prohibitions.
37-29-403. Procedure for making and fitting partial denture.
37-29-404. Notice of board address — guarantee.
37-29-405. Advertising restrictions.
37-29-406 through 37-29-410 reserved.
37-29-411. Injunction.
37-29-412. Violation and penalty.

Chapter Cross-References

Dentistry and dental hygiene, Title 37, ch. 4.

Part 1

General

37-29-101. Short title. This chapter may be cited as the "Freedom of Choice in Denture Services Act of 1984".

History: **En. Sec. 1, I.M. No. 97, approved Nov. 6, 1984.**

37-29-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the state board of dentistry provided for in 2-15-1842.

(2) "Denture" means any removable full or partial upper or lower prosthetic dental appliance to be worn in the mouth.

(3) "Denturist" means a person licensed under this chapter to engage in the practice of denturitry.

(4) "Department" means department of commerce provided for in Title 2, chapter 15, part 18.

(5) "Immediate denture" means a denture constructed prior to and inserted immediately after extraction of teeth.

(6) "Practice of denturitry" means:

(a) the making, fitting, constructing, altering, reproducing, or repairing of a denture and furnishing or supplying of a denture directly to a person or advising the use of a denture; or

(b) the taking or making or the giving of advice, assistance, or facilities respecting the taking or making of any impression, bite, cast, or design preparatory to or for the purpose of making, constructing, fitting, furnishing, supplying, altering, repairing, or reproducing a denture.

History: En. Sec. 2, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 3, Ch. 524, L. 1987.

37-29-103. Association with dentists permitted. A licensed denturist may enter into any lawful agreement with a dentist regarding fees, compensation, and business association.

History: En. Sec. 19, I.M. No. 97, approved Nov. 6, 1984.

37-29-104. Health insurance policies to include denturist services. Notwithstanding any provision of any policy of insurance covering health, whenever such policy provides for reimbursement for any service that is within the lawful scope of practice of a denturist, the insured under such policy is entitled to reimbursement for such service, whether the service is performed by a licensed dentist or a licensed denturist.

History: En. Sec. 18, I.M. No. 97, approved Nov. 6, 1984.

Cross-References

Insurance contract — policy provisions, Title 33, ch. 15, part 3.

Dentists performing services common to medicine and dentistry, 33-30-1011.

37-29-105. Applicability of other law. To the extent that they do not conflict with the provisions of this chapter, the provisions of chapter 1 of this title and Title 2, chapters 4 and 15, apply to the powers and duties of the department and the board.

History: En. Sec. 12, Ch. 548, L. 1985.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Allocation of boards for administrative purposes, 2-15-121.

Part 2

Board of Dentistry

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

37-29-201. Board powers and duties. The board has the following powers and duties:

(1) determination of the qualifications of applicants for licensure under this chapter;

(2) administration of examinations for licensure under this chapter;

(3) collection of fees and charges prescribed in this chapter;

(4) issuance, suspension, and revocation of licenses for the practice of denturitry under the conditions prescribed in this chapter; and

(5) to adopt, amend, and repeal rules necessary for the implementation, continuation, and enforcement of this chapter, including but not limited to license applications, form and display of licenses, license examination format, criteria and grading of examinations, disciplinary standards for licensees, inspection of denturitry premises and facilities, and investigation of complaints.

History: En. Sec. 10, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 4, Ch. 548, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-29-202. Repealed. Sec. 5, Ch. 524, L. 1987.

History: En. Sec. 8, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 2, Ch. 548, L. 1985.

37-29-203. Repealed. Sec. 5, Ch. 524, L. 1987.

History: En. Sec. 9, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 3, Ch. 548, L. 1985.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-29-301. License to practice required. (1) After April 1, 1985, a person must hold a license for the practice of denturitry in order to perform the following acts:

(a) engaging or offering to engage in the practice of denturitry; or

(b) use in connection with his name the word or letters "denturist", "L.D.", or any other words, letters, abbreviations, or insignia implying that such person is engaged in the practice of denturitry.

(2) The practice of denturitry within the context of this chapter requires that all work except cast frame work be performed at the address shown on the denturist's license.

History: En. Sec. 3, I.M. No. 97, approved Nov. 6, 1984.

37-29-302. Exceptions. The provisions of this chapter do not apply to:

(1) a person interning under the direct supervision of a licensed denturist as required by 37-29-303(2), provided that no denturist may supervise more than one such person at any one time;

(2) the practice of dentistry or medicine by persons authorized to do so by the state of Montana; or

(3) a student of denturitry in pursuit of clinical studies under a school program or internship as required by 37-29-303(2).

History: En. Sec. 4, I.M. No. 97, approved Nov. 6, 1984.

37-29-303. Application for license. Upon application and payment of the appropriate fee, the board shall issue a license to practice denturitry to any applicant who meets one of the following criteria and scores a passing grade on the examination for licensure:

(1) (a) Applications for persons engaged in the practice of denturitry on December 1, 1984, must be filed prior to April 1, 1985, and must include the following:

(i) three signed affidavits by persons other than family members that the applicant has been employed in denture technology for at least 5 years prior to application, is able to demonstrate competency in intraoral procedures, and has been a resident of the state of Montana for at least 6 months prior to April 1, 1985; and

(ii) documentation that the applicant has successfully completed courses approved by the board in head and oral anatomy and physiology, oral pathology, partial denture construction and design, clinical dental technology, radiology, dental laboratory technology, asepsis, clinical jurisprudence, medical emergencies, and cardiopulmonary resuscitation.

(b) Subsection (1)(a) must be applied retroactively to permit qualification of license applicants initially qualified and applying prior to the appointment and qualification of the original board under this chapter and section 27 of I.M. No. 97.

(2) Applications filed on or after April 1, 1985, must include:

(a) documentation that the applicant has completed formal training of not less than 2 years at an educational institution accredited by a national or regional accrediting agency recognized by the Montana state board of regents, the curriculum of which includes courses in head and oral anatomy and physiology, oral pathology, microbiology, partial denture construction and design, clinical dental technology, radiology, dental laboratory technology, asepsis, clinical jurisprudence, and medical emergencies, including cardiopulmonary resuscitation; and

(b) documentation that the applicant:

(i) has completed 1 year of internship under the direct supervision of a licensed denturist; or

(ii) has 3 years of experience as a denturist under licensure in another state or Canada.

(3) A denturist who has been lawfully licensed or certified by initial licensing provisions in any state or territory that maintains a standard of denturitry which is equal to that of Montana must submit a certificate from the examining body of the state or territory in which he is certified or licensed,

attesting to 5 years' practice under the certificate of license. However, no applicant may be licensed under the provisions of this subsection unless the state or territory in which he is licensed or certified extends a like privilege to denturists licensed by the state of Montana to practice denturitry. The board may enter into reciprocal relations with those states or territories whose laws are compatible with this chapter.

History: En. Sec. 11, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 5, Ch. 548, L. 1985; amd. Sec. 1, Ch. 245, L. 1991.

Cross-References

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-29-304. Applications and fees. (1) The board is initially entitled to charge and collect the following fees:

(a) $200 application for licensing;

(b) $200 for original license;

(c) $200 annual license renewal fee;

(d) $200 for examination or reexamination, provided that if on reexamination only the written examination is required, the fee is $100; and

(e) $50 for a duplicate or replacement license or a license for a second address, provided that no denturist may hold licenses bearing more than two different addresses.

(2) The board may set other fees and modify the initial fees in accordance with the provisions of 37-1-134.

History: En. Sec. 13, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 6, Ch. 548, L. 1985.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

37-29-305. Examinations. The board shall administer the examinations for licensure, subject to the following requirements:

(1) Examinations must be of such character as to determine the qualifications, fitness, and ability of the applicant to practice denturitry. The form of the test must include written and oral examinations and a practical demonstration of skills.

(2) Examinations must be held at least annually on the second Monday in July. An applicant must obtain an average percentage score of 75% or better to qualify for licensure. The written and practical examinations shall carry equal weight. The oral examination results may adjust an average score only two percentage points.

(3) The written examination must include coverage of the following subjects:

(a) head and oral anatomy and physiology;

(b) oral pathology;

(c) partial denture construction and design;

(d) microbiology;

(e) radiology;

(f) clinical dental technology;

(g) dental laboratory technology;

(h) asepsis;

(i) clinical jurisprudence;
(j) medical emergencies.

(4) Applicants who fail to score a 75% average on the written and practical examinations may, upon payment of the appropriate fee, have a second opportunity to take the written or practical examinations, or both, provided that all applicants under 37-29-303(1) are examined on or before April 1, 1985.

History: En. Sec. 12, I.M. No. 97, approved Nov. 6, 1984.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

37-29-306. Licensing. (1) After March 1, 1985, a denturist license is valid for a period of 1 year. A renewal license must be issued upon payment of the renewal fee and the submission of proof of the completion of not less than 12 hours of continuing education, which may include programs sponsored by an educational institution, state denturist licensing board, or a recognized denturist organization. Subject matter must be pertinent to denturitry as enumerated in 37-29-305(3). Approval of acceptable hours of continuing education must be made by the board. The board may approve, in one action, all the courses presented by a particular organization if the board is satisfied that the courses presented by that organization meet the requirements of this section. Hours pertain to clock hours actually attended by the licensee. In addition, the denturist shall submit proof that he holds a current cardiopulmonary resuscitation card. A license issued effective as of a date other than March 1 will be valid until midnight February 28 next following the date it was issued. The license shall bear on its face the address where the licensee's denturist services will be performed.

(2) Applications must be submitted on forms approved by the board and furnished by the department. Each application must include all other documentations necessary to establish that the applicant meets the requirements for licensure and is eligible to take the licensure examination. Applications must be accompanied by the appropriate fees.

(3) After April 1, 1985, the board may by rule alter future renewal dates for licenses under this chapter.

History: En. Sec. 14, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 7, Ch. 548, L. 1985; amd. Sec. 49, Ch. 83, L. 1989; amd. Sec. 2, Ch. 245, L. 1991.

37-29-307 through 37-29-310 reserved.

37-29-311. Suspension or revocation of license. (1) The board has the power to refuse to issue a license, to suspend or revoke a license or to place a licensed person on probation for a period specified by the board, or to reprimand or censure a licensee for any of the following causes:

(a) conviction of a crime if that crime bears a demonstrable relationship to the practice of denturitry;

(b) incompetence or gross negligence in the practice of denturitry;

(c) fraud or misrepresentation in the practice of denturitry;

(d) the use of any narcotic or dangerous drug or intoxicating liquor to an extent that such use impairs the ability to conduct safely the practice of denturitry;

(e) the willful violation of any provision of this chapter; or

(f) unprofessional conduct as defined by rule of the board.

(2) The board or its agents may examine and inspect the place of business of any denturist at any time during business hours or upon at least 72 hours' notice made by U.S. mail to the address of record of the denturist if the board or its agents are unable to establish the regular business hours. Inspections must be made to insure compliance with the standards of conduct and practice set forth in 37-29-401.

(3) Conditions considered by investigators to be a menace to the public health must be brought to the attention of the board for consideration and immediate action.

History: En. Sec. 15, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 8, Ch. 548, L. 1985.

Cross-References

Power of agencies to issue subpoenas, 2-4-104.

Contested case procedure, Title 2, ch. 4, part 6.

Power of hearing officer to issue subpoenas, 2-4-611.

Contempts, Title 3, ch. 1, part 5.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of Director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-29-312. Revocation of license stays eligibility. A denturist whose license has been revoked either by the Montana board of denturitry or the similar body of another state is not eligible to apply for a license until 1 year after the date of revocation.

History: En. Sec. 16, I.M. No. 97, approved Nov. 6, 1984.

37-29-313. Renewal or reinstatement of license. One year after revocation of a license, the board at its discretion may grant a temporary license under a 1-year probationary period. At the end of the probationary period, the licensee must appear before the board and upon approval by the board and payment of appropriate fee must be fully reinstated. The board shall grant such approval upon being satisfied that the licensee has complied with this chapter during the probationary period and will comply in the future.

History: En. Sec. 17, I.M. No. 97, approved Nov. 6, 1984.

37-29-314 through 37-29-320 reserved.

37-29-321. Judicial review of board action. A person who is aggrieved by an action of the board in denying, refusing to renew, suspending, or revoking a denturist license may petition for judicial review as provided in Title 2, chapter 4, part 7.

History: En. Sec. 22, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 9, Ch. 548, L. 1985.

Part 4
Regulation

37-29-401. Standards of conduct and practice. Each denturist must comply with the following standards in his practice:

(1) There shall be at least three separate rooms:

(a) a reception room;

(b) an operatory room; and

(c) a laboratory.

(2) The operatory room must have a sink and cuspidor with running water and a disposal system.

(3) There must be a sterilization unit and cold disinfectant in every office to insure the protection of the public. Each denturist shall take care to use proper sterilization and sanitation techniques in all phases of his work.

(4) Floors, walls, ceilings, and benches must be kept in a sanitary condition.

(5) Every patient must have a separate and clean bib and a disposable cup.

(6) Every denturist shall wear a clean and professional garment.

(7) Every denturist shall wash his hands with germicidal or antiseptic soap and water in the presence of each patient.

(8) Every licensed denturist must carry a current cardiopulmonary resuscitation card.

(9) Adequate and conveniently located toilet facilities must be provided within the building.

(10) A complete record of each patient must be kept.

(11) All teeth and materials used shall meet American dental association standards.

(12) All nonmetal full dentures shall be permanently identified with the first and last name of the owner at the time of processing the dentures.

History: En. Sec. 6, I.M. No. 97, approved Nov. 6, 1984.

37-29-402. Prohibitions. No licensed denturist may:

(1) extract or attempt to extract teeth;

(2) initially insert immediate dentures in the mouth of the intended wearer;

(3) diagnose or treat any abnormalities, except that a licensed denturist may apply tissue conditioning agents;

(4) recommend any prescription drug for any oral or medical disease; or

(5) construct or fit orthodontic appliances.

History: En. Sec. 5, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 3, Ch. 245, L. 1991.

37-29-403. Procedure for making and fitting partial denture. (1) Prior to making and fitting a partial denture, a denturist shall:

(a) formulate a study model of the intended denture;

(b) refer the patient to a dentist, together with the model for tooth cleaning, mouth preparation, and x-rays, as needed; and

(c) make the partial denture and fit it to the existing teeth after the dentist has completed the procedures listed in subsection (1)(b) and in accordance with the dentist's recommendations.

(2) A denturist may not cut, surgically remove, or surgically reduce any tissue or teeth in the process of fitting a partial denture.

(3) A denturist who makes or fits a partial denture in a manner not consistent with this section is subject to the sanctions provided in 37-29-311.

History: En. Sec. 15, Ch. 548, L. 1985.

37-29-404. Notice of board address — guarantee. (1) A notice must be posted in a conspicuous area on any premises where the practice of denturitry is conducted, with lettering of a size easily read by the average person and in substantially the following form:

> ANY CONSUMER WHO HAS A COMPLAINT RELATING TO PRACTICES OF THIS ESTABLISHMENT MAY CONTACT THE MONTANA BOARD OF DENTISTRY, DEPARTMENT OF COMMERCE, 1424 NINTH AVENUE, HELENA, MONTANA 59620.

(2) All denturist services must be unconditionally guaranteed for a period of not less than 90 days.

History: En. Sec. 20, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 4, Ch. 524, L. 1987.

37-29-405. Advertising restrictions. No person may represent or hold himself out to the public as a denturist or as practicing denturitry unless licensed under this chapter.

History: En. Sec. 14, Ch. 548, L. 1985.

37-29-406 through 37-29-410 reserved.

37-29-411. Injunction. When it appears to the board that any person, firm, or corporation is violating any of the provisions of this chapter, the board may in its own name bring an action in a court of competent jurisdiction for an injunction against such violation, and the court may enjoin the person, firm, or corporation from violation of this chapter without regard to whether proceedings have been or may be instituted before the board or whether criminal proceedings have been or may be instituted.

History: En. Sec. 11, Ch. 548, L. 1985.

37-29-412. Violation and penalty. Violation of any provision of this chapter constitutes a misdemeanor and upon conviction is punishable by a fine of not less than $100 or more than $1,000 or by imprisonment for not more than 6 months in the county jail, or by both such fine and imprisonment.

History: En. Sec. 21, I.M. No. 97, approved Nov. 6, 1984.

CHAPTER 30

BARBERS

Part 1 — General

37-30-101. Definitions — practice of barbering.

Part 2 — Board of Barbers

37-30-201. Organization — seal — records — deposit of money.
37-30-202. Compensation of members — expenses.
37-30-203. Powers and duties of board and department — conducting examinations — rulemaking — hiring of inspectors.

Part 3 — Licensing of Barbers

37-30-301. Certificate required.
37-30-302. Repealed.
37-30-303. Qualifications — application.
37-30-304. Repealed.
37-30-305. Examination.
37-30-306. Communicable disease — physician's certificate required.
37-30-307. Fees — handicapped persons exempted — other fees prohibited.
37-30-308. Display of certificate.
37-30-309. Admission of licensee from other state.
37-30-310. Instructor's certificate required — application and qualification — fees.
37-30-311. Instructor's certification examination.

Part 4 — Licensing and Regulation of Barbershops and Schools

37-30-401. License required.
37-30-402. Application procedure for barbershops — investigation and inspection — hearing — grant or refusal of license.
37-30-403. Facilities required for licensure — inspection.
37-30-404. Barber schools — operator — license fee.
37-30-405. Barber school license — application procedure.
37-30-406. Barber schools — curriculum and students.
37-30-407. Barber schools — operating requirements.
37-30-408 through 37-30-410 reserved.
37-30-411. Only licensed barber eligible for barbershop license.
37-30-412. Barbershop owner's duty to monitor employees.
37-30-413. Display of price schedule.
37-30-414 through 37-30-420 reserved.
37-30-421. Display of license.
37-30-422. Maintenance of sanitary conditions.
37-30-423. Initial inspection fee — renewal.
37-30-424. Fee for advanced barber training program, clinic, or seminar.
37-30-425. Renumbered 37-30-502.

Part 5 — Remedies for Violation

37-30-501. Penalty.
37-30-502. Refusal, suspension, or revocation of license.

Part 1
General

37-30-101. Definitions — practice of barbering. (1) Unless the context requires otherwise, as used in this chapter the following definitions apply:

(a) "Barbershop" means a place where a person carries on, engages in, practices, or causes to be carried on, engaged in, or practiced the business of barbering.

(b) "Board" means the board of barbers provided for in 2-15-1856.

(c) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(2) Any one or any combination of the following practices, when done upon the human body for tonsorial purposes and not for the treatment of disease or physical or mental ailments and when done for payment, either directly or indirectly, constitutes the practice of barbering:

(a) shaving or trimming the beard;

(b) cutting, styling, coloring, or waving the hair;

(c) straightening of the hair by using chemicals;

(d) giving facial or scalp massage or treatment with oils, creams, lotions, or other preparations, either by hand or mechanical appliances;

(e) singeing or shampooing the hair or applying hair tonic or bleaching or highlighting the hair of male persons;

(f) applying cosmetic preparations, antiseptics, powders, oils, lotions, or gels to scalp, face, hands, or neck.

(3) The practice of cosmetology by a licensed cosmetologist, including cutting the hair of any person, does not constitute the practice of barbering.

History: (1)En. 66-401.1 by Sec. 34, Ch. 350, L. 1974; Sec. 66-401.1, R.C.M. 1947; (2)En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; Sec. 66-403, R.C.M. 1947; (3)En. Sec. 2, Ch. 127, L. 1929; re-en. Sec. 3228.20, R.C.M. 1935; amd. Sec. 2, Ch. 183, L. 1937; Sec. 66-402, R.C.M. 1947; R.C.M. 1947, 66-401.1, 66-402, 66-403(2); amd. Sec. 3, Ch. 274, L. 1981; (4)En. Sec. 4, Ch. 544, L. 1981; amd. Sec. 1, Ch. 565, L. 1983; amd. Sec. 1, Ch. 274, L. 1985.

Cross-References

Cosmetology not practice of barbering, 37-31-102.

Part 2
Board of Barbers

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1856.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-30-201. Organization — seal — records — deposit of money. (1) The board shall elect a president, secretary, and treasurer. It shall adopt a seal for the authentication of its orders and records.

(2) The department shall keep a record of proceedings of the board. Money collected by the department shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 7, Ch. 127, L. 1929; re-en. Sec. 3228.25, R.C.M. 1935; amd. Sec. 138, Ch. 147, L. 1963; amd. Sec. 23, Ch. 177, L. 1965; amd. Sec. 39, Ch. 350, L. 1974; R.C.M. 1947, 66-407; amd. Sec. 1, Ch. 277, L. 1983.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Public records, Title 2, ch. 6.

Duties of Department, 37-1-101.

37-30-202. Compensation of members — expenses. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 8, Ch. 127, L. 1929; re-en. Sec. 3228.26, R.C.M. 1935; amd. Sec. 2, Ch. 237, L. 1957; amd. Sec. 139, Ch. 147, L. 1963; amd. Sec. 2, Ch. 48, L. 1969; amd. Sec. 19, Ch. 93, L. 1969; amd. Sec. 1, Ch. 302, L. 1973; amd. Sec. 40, Ch. 350, L. 1974; amd. Sec. 25, Ch. 439, L. 1975; R.C.M. 1947, 66-408; amd. Sec. 24, Ch. 474, L. 1981.

37-30-203. Powers and duties of board and department — conducting examinations — rulemaking — hiring of inspectors. (1) The department shall, subject to 37-1-101, conduct practical examinations of applicants for certificates of registration to practice as registered barbers or barber instructors not less than four times a year at times and places the board determines. The examinations shall cover the fundamentals of barbering, dermatology, and sanitation. The department shall issue certificates of registration.

(2) The board may adopt rules for the administration of this chapter.

(3) A person hired by the department to make an inspection of a barbershop, school, or college shall receive a salary plus travel expenses as provided for in 2-18-501 through 2-18-503, as amended.

History: En. Sec. 9, Ch. 127, L. 1929; amd. Sec. 2, Ch. 18, L. 1931; re-en. Sec. 3228.27, R.C.M. 1935; amd. Sec. 4, Ch. 150, L. 1939; amd. Sec. 3, Ch. 48, L. 1969; amd. Sec. 41, Ch. 350, L. 1974; amd. Sec. 10, Ch. 453, L. 1977; R.C.M. 1947, 66-409; amd. Sec. 3, Ch. 83, L. 1981; amd. Sec. 5, Ch. 544, L. 1981; amd. Sec. 2, Ch. 565, L. 1983; amd. Sec. 2, Ch. 274, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation for administrative purposes only, 2-15-121.

Quasi-judicial boards, 2-15-124.

Duties of boards, 37-1-131.

Part 3

Licensing of Barbers

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-30-301. Certificate required. (1) Except as provided in subsection (2), a person may not practice or attempt to practice barbering unless he first receives from the department a certificate of registration.

(2) The board may authorize the department to grant a temporary certificate to any person qualified to take the examination required by 37-30-305 who pays a temporary certification fee prescribed by the board. A person holding a temporary certificate may engage in the practice of barbering under

the supervision of a certified barber for a period of 90 days or until the next examination scheduled by the board, whichever is longer.

History: En. Sec. 12, Ch. 127, L. 1929; re-en. Sec. 3228.30, R.C.M 1935; amd. Sec. 7, Ch. 150, L. 1939; amd. Sec. 44, Ch. 350, L. 1974; R.C.M. 1947, 66-412(1); amd. Sec. 3, Ch. 565, L. 1983; amd. Sec. 3, Ch. 274, L. 1985.

37-30-302. Repealed. Sec. 18, Ch. 565, L. 1983.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(6).

37-30-303. Qualifications — application. (1) A person is qualified to receive a certificate of registration to practice barbering only if he:

(a) has completed 2,000 hours of instruction at a licensed barber school or college or other school recognized by the board and graduated from a licensed barber school or college or other school recognized by the board;

(b) has successfully passed the examination conducted by the department under 37-30-305, subject to 37-1-101, to determine his fitness to practice barbering;

(c) is at least 18 years old;

(d) is a graduate of the 8th grade; and

(e) is of good moral character.

(2) An applicant must file with the department an application setting forth the following information:

(a) full name and age of the applicant;

(b) name and place of the licensed barber school or college or other school which he attended;

(c) dates of attendance at the licensed barber school or college or other school;

(d) whether the applicant received a certificate of graduation from a licensed barber school or college or other school; and

(e) other information the board considers necessary.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(1), (3), (4); amd. Sec. 4, Ch. 565, L. 1983; amd. Sec. 4, Ch. 274, L. 1985.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Apprenticeship, Title 39, ch. 6, part 1.

37-30-304. Repealed. Sec. 8, Ch. 274, L. 1985.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(5).

37-30-305. Examination. Except as provided in 37-30-309, an applicant for a barber's certificate of registration must apply to the department to take the examination for a barber's certificate of registration.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch.

237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(7); amd. Sec. 6, Ch. 544, L. 1981; amd. Sec. 5, Ch. 274, L. 1985.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

37-30-306. Communicable disease — physician's certificate required. (1) A barber or barber instructor may not receive a certificate of registration or renewal until he has presented to the board of barbers a physician's certificate showing him to be free of physical ailments that would tend to endanger the health of the public. A person practicing or teaching barbering without a certificate of registration is guilty of a violation of this chapter.

(2) It is unlawful for a barber, barber instructor, or student of barbering to practice the occupation of a barber or do barber work while he has an infectious, contagious, or communicable disease that would endanger the health of the public.

(3) If a barber or barber instructor, after securing his certificate, contracts a communicable, infectious, or contagious disease endangering the public health, the board of barbers shall revoke or suspend his certificate of registration until the board has satisfactory proof that the barber or barber instructor is no longer afflicted with the communicable, infectious, or contagious disease.

History: En. Sec. 1, Ch. 127, L. 1929; re-en. Sec. 3228.19, R.C.M. 1935; amd. Sec. 1, Ch. 183, L. 1937; amd. Sec. 33, Ch. 350, L. 1974; R.C.M. 1947, 66-401(part); amd. Sec. 6, Ch. 565, L. 1983; amd. Sec. 6, Ch. 274, L. 1985.

37-30-307. Fees — handicapped persons exempted — other fees prohibited. (1) The fee to be paid by an applicant for an examination to determine his fitness to receive a certificate of registration to practice barbering and for the issuance of the certificate shall be prescribed by the board.

(2) A person registered as a barber shall, before the expiration date established by rule of the department, annually pay a license fee, set by the board based on clerical and administrative costs, for the renewal of his certificate of registration. If a barber fails to have the certificate renewed before the expiration date, the barber shall on renewal of the certificate of registration pay a penalty prescribed by the board in addition to the regular renewal fee. If a certificate of registration is not renewed within 1 year after the date of expiration, the barber is not entitled to have the certificate of registration renewed or a new certificate of registration issued without first applying for and taking the examination and paying the fees provided for in this section.

(3) However, physically handicapped persons trained for the barber profession by the department of social and rehabilitation services and certified by that department as having graduated from a barber college licensed by the board are not required to pay fees and are for a period of 1 year immediately following their training exempt from all except the sanitary provisions of this chapter.

(4) No other or additional license or fee may be imposed on barbers by a municipality or other subdivision of this state.

History: En. Sec. 11, Ch. 127, L. 1929; amd. Sec. 4, Ch. 18, L. 1931; re-en. Sec. 3228.29, R.C.M. 1935; amd. Sec. 4, Ch. 183, L. 1937; amd. Sec. 6, Ch. 150, L. 1939; amd. Sec. 3, Ch. 237, L. 1957; amd. Sec. 4, Ch. 48, L. 1969; amd. Sec. 1, Ch. 87, L. 1971; amd. Sec. 1, Ch. 301,

L. 1973; amd. Sec. 1, Ch. 330, L. 1973; amd. Sec. 43, Ch. 350, L. 1974; amd. Sec. 2, Ch. 533, L. 1977; R.C.M. 1947, 66-411(1), (2); amd. Sec. 52, Ch. 345, L. 1981; amd. Sec. 6, Ch. 390, L. 1983; amd. Sec. 5, Ch. 565, L. 1983; amd. Sec. 7, Ch. 274, L. 1985.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Nondiscrimination in licensing, 49-3-204.

37-30-308. Display of certificate. A holder of a certificate of registration shall display it in a conspicuous place adjacent to or near his work chair.

History: En. Sec. 5, Ch. 127, L. 1929; re-en. Sec. 3228.23, R.C.M. 1935; amd. Sec. 3, Ch. 150, L. 1939; amd. Sec. 37, Ch. 350, L. 1974; R.C.M. 1947, 66-405(1).

37-30-309. Admission of licensee from other state. The department may issue, at the board's discretion, a barber's license without examination to a person who holds a current license as a barber from another jurisdiction if the board finds that the standards for licensure in the other jurisdiction are at least substantially equivalent to those prevailing in this state and that the applicant is otherwise qualified.

History: En. Sec. 11, Ch. 544, L. 1981.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-30-310. Instructor's certificate required — application and qualification — fees. (1) Except as provided in subsection (3), no person may for a fee instruct another in the practice of barbering unless that person holds an instructor's certificate issued by the board.

(2) The board shall issue an instructor's certificate to:

(a) any person engaged as an instructor in a barber college on October 1, 1983, upon payment of the certification fee; or

(b) any person who passes the instructor's examination given by the department and pays a certification fee established by the board.

(3) This section does not apply to persons paying the annual license fee required by 37-30-424.

History: En. Sec. 13, Ch. 565, L. 1983.

37-30-311. Instructor's certification examination. (1) An instructor's examination may be administered only to those persons who are high school graduates or possess the equivalent of a high school diploma and who:

(a) have been actively and continuously engaged in the practice of barbering in this state or in any other state requiring a barber's certificate or license, under laws substantially equivalent to this chapter, for at least 3 years immediately prior to application to take the instructor's certification examination; or

(b) have a barber's license or certificate of registration and have completed a course in barber instructor training of at least 500 hours of instruction at a barber school or college licensed by the board under this chapter.

(2) Instructor's examinations must be held at the time and place specified by the board, but must be held at least once a year.

(3) Anyone failing twice to pass an examination may not apply to retake the examination:

(a) sooner than 6 months after the date of the second failure; or

(b) until he has taken 200 hours of additional instructor training at a barber school or college licensed by the board.

History: En. Sec. 14, Ch. 565, L. 1983; amd. Sec. 1, Ch. 4, L. 1987.

Part 4
Licensing and Regulation of Barbershops and Schools

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-30-401. License required. A barbershop, school, or college must be conducted at a fixed place of establishment. A person or corporation may not open or maintain a barbershop, school, or college or hold himself or itself out as engaging in or conducting a barbershop, school, or college unless first licensed by the board.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(part (8)).

37-30-402. Application procedure for barbershops — investigation and inspection — hearing — grant or refusal of license. An application for a barbershop license shall be in writing and verified on a form prescribed by the board. On receipt by the department of an application for a license and on payment to the department of the initial inspection fee, the board shall have an investigation and inspection made as to the character of the applicant and, on notice and after hearing, shall report its findings to the department, which shall grant a license if the board finds that the applicant is of good character and that the proposed barbershop is equipped and will be conducted as required under this chapter. The application must be granted or refused within 30 days from the date of filing of the application or within 15 days after the hearing on the application if a hearing is held.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(9); amd. Sec. 7, Ch. 565, L. 1983.

Cross-References

Oath defined, 1-1-201.

Proof of execution, Title 1, ch. 5, part 3.

Power of notary to take acknowledgments, 1-5-416.

Oaths, Title 1, ch. 6.

Affidavits, Title 26, ch. 1, part 10.

Licensing investigation and review — record access, 37-1-135.

Perjury, 45-7-201.

False swearing, 45-7-202.

37-30-403. Facilities required for licensure — inspection. (1) Before a license is issued to conduct a barbershop, school, or college in this state, the barbershop, school, or college must be inspected by the department and approved by the board and shall meet the following requirements:

(a) It must have both hot and cold running water connected with the city water supply. In villages or towns where running water is not available, hot-water tanks shall have not less than a 2-gallon capacity with gravity pressure. Wastewater shall be disposed of through some system carrying it away from the building. This shall be done by sewer connections or in a manner meeting the requirements of the department of health and environmental sciences rules, city ordinances, and having the approval of the city or village board of health, as required by law.

(b) The headrest of a barber chair must be equipped so that each customer will be supplied with a clean, fresh paper or towel.

(c) It must have a closed cabinet for each chair, to keep instruments in when not in use, and must have proper sterilization equipment for immersing instruments before use on each customer.

(d) It must have a sufficient number of towels so that each customer will be served with a clean, laundered towel.

(e) It must be well-lighted, well-ventilated, and kept in a clean, orderly, and sanitary condition at all times.

(f) It must pay to the department the required fee.

(2) Barbershops, barber schools, or colleges shall be open for inspection during business hours, to members of the department.

(3) The board shall inspect annually each barbershop, school, or college to determine compliance with statutory requirements and board rules. The board may suspend or revoke the license of any barbershop, school, or college that violates statutory requirements or board rules.

(4) The board may grant a temporary license to a barbershop until such time as the initial inspection is completed.

(5) Barber schools and colleges must also comply with the provisions of 37-30-406 and 37-30-407.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(part); amd. Sec. 7, Ch. 544, L. 1981; amd. Sec. 8, Ch. 565, L. 1983.

Cross-References

Licensing investigation and review — record access, 37-1-135.

37-30-404. Barber schools — operator — license fee. (1) A barber school or college operating in this state must have in charge a person who has had 3 years' continuous experience as a barber and who is licensed as a barber instructor under 37-30-310.

(2) The owner of the school or college shall first secure a license to operate granted by the board and issued by the department, on payment of an annual license fee prescribed by the board, and shall keep the license prominently displayed.

(3) The owner shall, before commencing business, file with the secretary of state a bond to this state, which shall be approved by the attorney general, in the sum of $5,000, conditioned on the faithful compliance of the barber school or college with this chapter and the payment of judgments that may be obtained against the school, college, or owner on account of fraud, misrepresentation, or deceit practiced by them or by their agents.

(4) All barber schools or colleges shall keep prominently displayed a substantial sign as a barber school or barber college.

(5) On receiving students, all barber schools or colleges shall immediately apply to the department for student permits on blank forms prescribed by the board.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(part (8)); amd. Sec. 53, Ch. 345, L. 1981; amd. Sec. 8, Ch. 544, L. 1981; amd. Sec. 9, Ch. 565, L. 1983.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-30-405. Barber school license — application procedure. (1) A person desiring to conduct a barber school or college must make application for the license required by 37-30-401 on forms provided by the department. The application must:

(a) include the name and address of the owners of the school and of the school itself;

(b) show that the person in charge has the experience required by 37-30-404;

(c) show that the applicant is of good moral character and possesses any education, training, and experience required by this chapter and any reasonable rules of the board;

(d) include a detailed floor plan of the school showing that it will have adequate space to conduct the activities of the school and that it will have at least two public restrooms, a storage room, a classroom, and a manager's office;

(e) include the names and addresses of the instructors;

(f) include a copy of any school rules;

(g) show that the school and its owner or manager can and will comply with the requirements of this chapter and the rules of the board; and

(h) be accompanied by the application and initial inspection fee established by the board.

(2) Upon receipt of a completed application, the department must conduct an inspection of the school to determine its compliance with 37-30-403, 37-30-406, 37-30-407, and this section. The board must issue the license if the school, its owner, and manager have:

(a) filed the bond required under 37-30-404; and

(b) complied with the requirements of this chapter and the rules of the board.

History: En. Sec. 10, Ch. 565, L. 1983.

37-30-406. Barber schools — curriculum and students. (1) A barber school or college licensed under this chapter shall require the completion by every student in not less than 11 months and not more than 15 months of 2,000 hours of instruction for graduation. Hours of training must be allocated in the following amounts to the courses or subjects specified:

(a) haircutting, 300 hours;

(b) shampooing, 150 hours;

(c) facials, 50 hours;

(d) styling, 300 hours;

(e) permanent waving, 300 hours;
(f) hair replacements, 50 hours;
(g) scalp treatments, 50 hours;
(h) chemical straightening, 50 hours;
(i) hair coloring, 200 hours;
(j) shaving, 25 hours;
(k) sales and products knowledge, 125 hours;
(l) shop management and bookkeeping, 50 hours;
(m) state barber laws, rules, and regulations, 25 hours;
(n) business ethics and personal grooming, 25 hours; and
(o) balance to be used at the discretion of the school, 300 hours.

(2) Within the limits prescribed by subsection (1), the course of study at a school or college must be designed to prepare a student to successfully complete the examinations required by 37-30-303 and 37-30-305.

(3) A barber school or college licensed under this chapter:

(a) shall use a grading system for each student, keep a record of the attendance of each student, and require satisfactory completion of regular examinations, of which records must be kept;

(b) shall maintain the records required by subsection (3)(a) for inspection by the board;

(c) shall certify to the board a copy of a student's transcript within 3 days of his completion of 2,000 hours of study and graduation;

(d) shall furnish to a student at the time of his initial registration a statement showing the cost of tuition, books, equipment, supplies, and any other charges to be made prior to graduation;

(e) shall employ one instructor for every 15 students;

(f) may not begin instruction at a new school with less than 7 students;

(g) may not require a student to take more than 8 hours of classroom instruction a day;

(h) may not allow a student to engage in the practice of barbering upon the public until he has completed 100 hours of instruction at the school; and

(i) may not enroll any student transferring from another school until a certified transcript of the student's course work has been received and approved by the board.

History: En. Sec. 11, Ch. 565, L. 1983.

37-30-407. Barber schools — operating requirements. (1) A barber school or college licensed or to be licensed under this chapter:

(a) may not allow any person to sleep in or use for residential or any other purpose tending to make unsanitary any part of the school or college used for instructional purposes;

(b) may not allow a barbershop to be operated in conjunction with the school or college;

(c) may not allow a student, other than a student teacher, to teach other students;

(d) may not advertise the price of any barbering service offered to members of the public;

(e) shall use any schedule of prices adopted by rule of the board;

(f) may not engage in false or deceptive advertising;

(g) may not advertise in any manner until a license has been received;

(h) shall notify the board of any change in the management of the school or college and of the discharge of any barber certified under this chapter; and

(i) may employ only instructors licensed under this chapter.

(2) It is the intent of the legislature, for the purposes of (d) and (e) of subsection (1) to avail itself of the immunity from the Sherman Antitrust Act (15 U.S.C. 1, et seq.) provided under the decision of the United States supreme court in Parker v. Brown, 317 US 341 (1943).

History: En. Sec. 12, Ch. 565, L. 1983.

37-30-408 through 37-30-410 reserved.

37-30-411. Only licensed barber eligible for barbershop license. A barbershop license may not be issued to anyone except one who holds a valid barber's certificate under this chapter, and a barbershop may not be maintained or conducted except by one who holds a barbershop license issued by the department under this chapter. This certificate or license is not transferable as to person or place.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(10).

37-30-412. Barbershop owner's duty to monitor employees. An owner or manager of a barbershop licensed under this chapter shall make certain that each barber employed holds a certificate to practice barbering in this state and that employees observe the sanitary rules of the department of health and environmental sciences and the department of commerce and report to the department of commerce the name of a person practicing barbering therein who has a communicable disease.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(part); amd. Sec. 3, Ch. 274, L. 1981.

37-30-413. Display of price schedule. A barbershop shall display a schedule of prices in a conspicuous place.

History: En. Sec. 5, Ch. 127, L. 1929; re-en. Sec. 3228.23, R.C.M. 1935; amd. Sec. 3, Ch. 150, L. 1939; amd. Sec. 37, Ch. 350, L. 1974; R.C.M. 1947, 66-405(3).

37-30-414 through 37-30-420 reserved.

37-30-421. Display of license. A license to operate a barbershop, school, or college shall specify the name of the licensee and shall be kept in a conspicuous place in the barbershop, school, or college. A barbershop, school, or college may not be conducted or held out as being conducted under any name except the name appearing as licensee on the license issued by the department.

History: En. Sec. 5, Ch. 127, L. 1929; re-en. Sec. 3228.23, R.C.M. 1935; amd. Sec. 3, Ch. 150, L. 1939; amd. Sec. 37, Ch. 350, L. 1974; R.C.M. 1947, 66-405(2).

37-30-422. Maintenance of sanitary conditions. Barbershops, barber schools, and barber colleges shall be operated and maintained in a sanitary condition in order to preserve the public health and prevent the spread of disease. The board of barbers in consultation with the department of health and environmental sciences may adopt rules to preserve the public health and prevent the spread of disease.

History: En. Sec. 1, Ch. 127, L. 1929; re-en. Sec. 3228.19, R.C.M. 1935; amd. Sec. 1, Ch. 183, L. 1937; amd. Sec. 33, Ch. 350, L. 1974; R.C.M. 1947, 66-401(part); amd. Sec. 9, Ch. 544, L. 1981.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-30-423. Initial inspection fee — renewal. (1) In addition to the fees and charges provided by law on March 11, 1939, barbershops established prior to that date and which had been under the inspection of the board shall pay an annual license fee set by the board based on clerical and administrative costs. Barbershops established after March 11, 1939, shall pay an initial inspection fee prescribed by the board for the first year or portion thereof and shall pay an annual license fee set by the board.

(2) Barbershop, school, or college licenses, once issued, expire each year on the date established by rule of the department, and an owner or manager of a barbershop, school, or college which continues in active operation shall annually, before the expiration date, renew his barbershop, school, or college license and pay the required fee. A barbershop which fails to have the license renewed before the expiration date each year shall, on renewal, pay a penalty prescribed by the board, and a barber school or college which fails to have the license renewed before the expiration date each year shall, on renewal, pay a penalty prescribed by the board.

History: En. Sec. 11, Ch. 127, L. 1929; amd. Sec. 4, Ch. 18, L. 1931; re-en. Sec. 3228.29, R.C.M. 1935; amd. Sec. 4, Ch. 183, L. 1937; amd. Sec. 6, Ch. 150, L. 1939; amd. Sec. 3, Ch. 237, L. 1957; amd. Sec. 4, Ch. 48, L. 1969; amd. Sec. 1, Ch. 301, L. 1973; amd. Sec. 1, Ch. 330, L. 1973; amd. Sec. 43, Ch. 350, L. 1974; amd. Sec. 2, Ch. 533, L. 1977; R.C.M. 1947, 66-411(part); amd. Sec. 54, Ch. 345, L. 1981; amd. Sec. 7, Ch. 390, L. 1983.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-30-424. Fee for advanced barber training program, clinic, or seminar. Any person not a resident of this state conducting in this state any advanced barber training program, clinic, or seminar for barbers as defined in this chapter shall pay an annual license fee prescribed by the board to the department or a 10-day license fee prescribed by the board and display the license while operating. Any such advanced barber training program, clinic, or seminar may be inspected by the department at reasonable times during operation.

History: En. Sec. 11, Ch. 127, L. 1929; amd. Sec. 4, Ch. 18, L. 1931; re-en. Sec. 3228.29, R.C.M. 1935; amd. Sec. 4, Ch. 183, L. 1937; amd. Sec. 6, Ch. 150, L. 1939; amd. Sec. 3, Ch. 237, L. 1957; amd. Sec. 4, Ch. 48, L. 1969; amd. Sec. 1, Ch. 301, L. 1973; amd. Sec. 1, Ch. 330, L. 1973; amd. Sec. 43, Ch. 350, L. 1974; amd. Sec. 2, Ch. 533, L. 1977; R.C.M. 1947, 66-411(part); amd. Sec. 55, Ch. 345, L. 1981; amd. Sec. 15, Ch. 565, L. 1983.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-30-425. Renumbered 37-30-502. Sec. 3, Ch. 465, L. 1989.

Part 5
Remedies for Violation

37-30-501. Penalty. A person practicing the occupation of a barber or barber instructor without first having obtained a license under this chapter or a person knowingly employing a barber or barber instructor who has not obtained a license or a person who falsely pretends to be qualified to practice the occupation of a barber or barber instructor or a person who otherwise violates this chapter is guilty of a misdemeanor and on conviction shall be fined not less than $25 or more than $200 or imprisoned in the county jail for not less than 10 days or more than 90 days, or both. In addition, the board may after hearing suspend or revoke a barber's or barber instructor's certificate of registration or license to operate a barbershop, school, or college, or both, by reason of the person willfully violating this chapter or persistently failing to conform to the rules adopted by the board.

History: En. Sec. 10, Ch. 127, L. 1929; amd. Sec. 2, Ch. 18, L. 1931; re-en. Sec. 3228.28, R.C.M. 1935; amd. Sec. 5, Ch. 150, L. 1939; amd. Sec. 42, Ch. 350, L. 1974; R.C.M. 1947, 66-410; amd. Sec. 17, Ch. 565, L. 1983.

Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

37-30-502. Refusal, suspension, or revocation of license. The board may, after notice and opportunity for a hearing, refuse to issue or renew or may suspend or revoke the license of a barber or the license of any barbershop, barber school, or college for any of the following acts of a licensee:

(1) the violation of any of the provisions of 37-30-308; 37-30-403, except subsection (1)(f); 37-30-406; 37-30-407; 37-30-412; 37-30-413; or 37-30-421;

(2) malpractice or incompetency;

(3) continued practice by a person knowingly having an infectious or contagious disease;

(4) advertising by means of knowingly false or deceptive statements;

(5) advertising, practicing, or attempting to practice under a trade name other than one's own;

(6) habitual drunkenness or addiction to the use of morphine, cocaine, or other habit-forming drugs;

(7) the violation of any of the rules adopted pursuant to 37-30-203, including rules defining unprofessional conduct.

History: En. 66-403.1 by Sec. 36, Ch. 350, L. 1974; R.C.M. 1947, 66-403.1; amd. Sec. 10, Ch. 544, L. 1981; amd. Sec. 16, Ch. 565, L. 1983; amd. Sec. 91, Ch. 370, L. 1987; amd. Sec. 1, Ch. 465, L. 1989; Sec. 37-30-425, MCA 1987; redes. 37-30-502 by Sec. 3, Ch. 465, L. 1989.

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

CHAPTER 31

COSMETOLOGY

Part 1 — General

37-31-101. Definitions.
37-31-102. Exemptions.

Part 2 — Board of Cosmetologists

37-31-201. Organization — seal.
37-31-202. Compensation of members — expenses.
37-31-203. Rulemaking powers.
37-31-204. Sanitary rules.

Part 3 — Licensing

37-31-301. Prohibited acts.
37-31-302. License required to practice, teach, or operate salon, booth, or school.
37-31-303. Application for license to practice or teach.
37-31-304. Qualifications of applicants for license to practice.
37-31-305. Qualifications of applicants for license to teach.
37-31-306. Reciprocity.
37-31-307. Temporary license pending examination.
37-31-308. Examination — reexamination — exemption for handicapped persons.
37-31-309. Booth rental license.
37-31-310 reserved.
37-31-311. Schools — certificate of registration — requirements — bond — curriculum.
37-31-312. Inspection.
37-31-313 through 37-31-320 reserved.
37-31-321. Issuance of licenses and certificates.
37-31-322. Renewal — continuing education — delinquency fee.
37-31-323. Fees.
37-31-324. Deposit of fees.
37-31-325 through 37-31-330 reserved.
37-31-331. Refusal, revocation, or suspension of licenses — grounds — notice and hearing.
37-31-332. Suspension for contracting communicable disease.
37-31-333. Appeal from actions of board.
37-31-334. Penalty — injunction.

Chapter Cross-References

Electrology, Title 37, ch. 32.

Part 1

General

37-31-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of cosmetologists provided for in 2-15-1857.

(2) "Booth" means any part of a cosmetology salon or manicuring salon that is rented or leased for the performance of cosmetologist services, as specified in 39-51-204(1)(l).

(3) "Cosmetology salon" means premises, building, or part of a building in which is practiced a branch or combination of branches of cosmetology or

the occupation of a hairdresser and cosmetician or cosmetologist and that must have a manager-operator in charge.

(4) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(5) "Manicuring" includes nail care of the hands and feet and the application and maintenance of artificial nails.

(6) "Manicuring salon" means premises, a building, or part of a building in which the art of manicuring is practiced.

(7) "Practice and teaching of cosmetology" means work included in the terms "hairdressing", "manicuring", and "beauty culture" and performed in cosmetology salons, in booths, or by itinerant cosmetologists, which work is done for the embellishment, cleanliness, and beautification of the hair, scalp, face, arms, feet, or hands. The practice and teaching of cosmetology may not be construed to include itinerant cosmetologists who perform their services without compensation for demonstration purposes in any regularly established store or place of business holding a license from the state of Montana as a store or place of business.

History: En. Sec. 2, Ch. 104, L. 1929; re-en. Sec. 3228.2, R.C.M. 1935; amd. Sec. 2, Ch. 222, L. 1939; amd. Sec. 2, Ch. 20, L. 1955; amd. Sec. 2, Ch. 244, L. 1961; amd. Sec. 1, Ch. 175, L. 1974; amd. Sec. 64, Ch. 350, L. 1974; R.C.M. 1947, 66-802; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 260, L. 1985; amd. Sec. 1, Ch. 602, L. 1985; amd. Sec. 2, Ch. 88, L. 1989; amd. Sec. 1, Ch. 473, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 473 in definition of booth substituted "cosmetology salon" for "cosmetological establishment" and substituted "salon" for "shop"; substituted cosmetology salon as defined term for cosmetological establishment; in definition of manicuring salon substituted "salon" for "shop"; in definition of practice and teaching of cosmetology substituted "cosmetology salons" for "so-called hairdressing and beauty shops"; and made minor changes in style.

Cross-References

Practice of barbering defined, 37-30-101.

37-31-102. Exemptions. Nothing in this chapter prohibits:

(1) service in case of emergency or domestic administration without compensation;

(2) services by persons authorized under the laws of this state to practice dentistry, the healing arts, or mortuary science; or

(3) services by barbers lawfully engaged in the performance of the usual and ordinary duties of their vocation or in cutting women's hair.

History: En. Sec. 18, Ch. 104, L. 1929; re-en. Sec. 3228.18, R.C.M. 1935; amd. Sec. 2, Ch. 101, L. 1977; R.C.M. 1947, 66-818.

Cross-References

Practice of barbering defined, 37-30-101.

Part 2
Board of Cosmetologists

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1857.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-31-201. Organization — seal. (1) The board shall annually, before March 1, elect from its number a president, vice-president, and secretary-treasurer.

(2) The board shall adopt a seal and authenticate its acts.

History: (1)En. Sec. 5, Ch. 104, L. 1929; re-en. Sec. 3228.5, R.C.M. 1935; amd. Sec. 5, Ch. 222, L. 1939; amd. Sec. 66, Ch. 350, L. 1974; Sec. 66-805, R.C.M. 1947; (2)En. Sec. 6, Ch. 104, L. 1929; re-en. Sec. 3228.6, R.C.M. 1935; amd. Sec. 2, Ch. 80, L. 1941; amd. Sec. 5, Ch. 244, L. 1961; amd. Sec. 67, Ch. 350, L. 1974; amd. Sec. 1, Ch. 305, L. 1977; Sec. 66-806, R.C.M. 1947; R.C.M. 1947, 66-805, 66-806(2).

Cross-References

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

37-31-202. Compensation of members — expenses. Each member of the board is entitled to receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 9, Ch. 104, L. 1929; re-en. Sec. 3228.9, R.C.M. 1935; amd. Sec. 8, Ch. 222, L. 1939; amd. Sec. 135, Ch. 147, L. 1963; amd. Sec. 1, Ch. 133, L. 1967; amd. Sec. 1, Ch. 224, L. 1974; amd. Sec. 70, Ch. 350, L. 1974; amd. Sec. 28, Ch. 439, L. 1975; amd. Sec. 1, Ch. 531, L. 1977; R.C.M. 1947, 66-809(part); amd. Sec. 25, Ch. 474, L. 1981.

37-31-203. Rulemaking powers. The board shall prescribe rules for:

(1) the conduct of its business;

(2) the qualification, examination, and registration of applicants to practice cosmetology or manicuring or to teach cosmetology;

(3) the qualification and registration of applicants for manager-operator licenses;

(4) the regulation and instruction of apprentices and students;

(5) the conduct of schools of cosmetology and schools of manicuring for apprentices and students;

(6) the qualification and registration of applicants for booth rental licenses; and

(7) generally the conduct of the persons, firms, or corporations affected by this chapter.

History: En. Sec. 6, Ch. 104, L. 1929; re-en. Sec. 3228.6, R.C.M. 1935; amd. Sec. 2, Ch. 80, L. 1941; amd. Sec. 5, Ch. 244, L. 1961; amd. Sec. 67, Ch. 350, L. 1974; amd. Sec. 1, Ch. 305, L. 1977; R.C.M. 1947, 66-806(1); amd. Sec. 15, Ch. 22, L. 1979; amd. Sec. 2, Ch. 602, L. 1985; amd. Sec. 3, Ch. 88, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Duties of boards, 37-1-131.

37-31-204. Sanitary rules. The board, subject to the approval of the department of health and environmental sciences, shall prescribe sanitary rules it considers necessary, with particular reference to the precautions necessary to be employed to prevent the creation and spread of infectious and contagious diseases.

History: **En. Sec. 12, Ch. 104, L. 1929; re-en. Sec. 3228.12, R.C.M. 1935; amd. Sec. 72, Ch. 350, L. 1974; R.C.M. 1947, 66-812.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-31-301. Prohibited acts. (1) Without an appropriate license issued under this chapter, it is unlawful to:

(a) practice cosmetology for compensation;

(b) own, manage, operate, or conduct a school of cosmetology or school of manicuring;

(c) manage or operate a cosmetology salon, manicuring salon, or booth;

(d) teach in a school of cosmetology or school of manicuring;

(e) practice manicuring for compensation;

(f) practice as a finger waver.

(2) It is unlawful:

(a) for a person who owns, manages, or controls a cosmetology salon to employ or use an unlicensed person as a cosmetologist or manicurist;

(b) to operate a cosmetology school without complying with all of the regulations of 37-31-311;

(c) to practice cosmetology in any place other than in a licensed salon as provided in this chapter, except when a licensed operator is requested:

(i) by a customer to go to a place other than a licensed salon and is sent to the customer from a licensed salon; or

(ii) by a handicapped or homebound customer to go to the customer's place of residence;

(d) for a person who owns, manages, or controls a manicuring salon to employ or use an unlicensed person as a manicurist;

(e) to operate a manicuring school without complying with 37-31-311;

(f) to violate any of the provisions of this chapter.

History: **En. Sec. 17, Ch. 104, L. 1929; amd. Sec. 1, Ch. 13, L. 1931; re-en. Sec. 3228.17, R.C.M. 1935; amd. Sec. 14, Ch. 222, L. 1939; amd. Sec. 1, Ch. 140, L. 1959; R.C.M. 1947, 66-817(A), (B); amd. Sec. 3, Ch. 602, L. 1985; amd. Sec. 4, Ch. 88, L. 1989; amd. Sec. 1, Ch. 23, L. 1993; amd. Sec. 2, Ch. 473, L. 1993.**

Compiler's Comments

1993 Amendments: Chapter 23 inserted (2)(c)(ii) to allow home-visit cosmetology for handicapped or homebound customers; and made minor changes in style.

Chapter 473 in two places in (1)(c) and once in (2)(a) and (2)(d) substituted "salon" for "shop"; in (1)(c), at end, deleted "beauty parlor"; in (2)(c) and (2)(c)(i), in two places, substituted "salon" for "establishment"; and made minor changes in style.

37-31-302. License required to practice, teach, or operate salon, booth, or school. (1) A person may not practice or teach cosmetology or practice or teach manicuring without a license.

(2) A place may not be used or maintained for the teaching of cosmetology or manicuring for compensation except under a certificate of registration.

(3) A person may not operate or manage a cosmetology salon or a manicuring salon or practice cosmetology or manicuring without a manager-operator license.

(4) A person may not operate or conduct a school of cosmetology or a school of manicuring and teach the art of cosmetology or manicuring without a license to teach cosmetology.

(5) A person may not manage or operate a booth without a booth rental license.

(6) A person, firm, partnership, or corporation desiring to operate a cosmetology salon shall make an application to the department for a certificate of registration and license. The application must be accompanied by the annual registration fee.

(7) A license may not be issued until the inspection fees required in 37-31-312 have been paid.

History: En. Sec. 1, Ch. 104, L. 1929; re-en. Sec. 3228.1, R.C.M. 1935; amd. Sec. 1, Ch. 222, L. 1939; amd. Sec. 1, Ch. 80, L. 1941; amd. Sec. 1, Ch. 211, L. 1945; amd. Sec. 1, Ch. 20, L. 1955; amd. Sec. 1, Ch. 244, L. 1961; amd. Sec. 1, Ch. 85, L. 1974; amd. Sec. 63, Ch. 350, L. 1974; R.C.M. 1947, 66-801; amd. Sec. 4, Ch. 106, L. 1981; amd. Sec. 4, Ch. 602, L. 1985; amd. Sec. 5, Ch. 88, L. 1989; amd. Sec. 3, Ch. 473, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 473 in (3) substituted "cosmetology salon" for "beauty shop" and substituted "manicuring salon" for "manicuring shop"; in (6) substituted "cosmetology salon" for "cosmetological establishment"; and made minor changes in style.

37-31-303. Application for license to practice or teach. An applicant for a license to practice or teach cosmetology or for a license to practice manicuring must qualify by filing an application prescribed by the board and by taking and passing the examination prescribed by the board. The license must be renewed annually under 37-31-322.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(3); amd. Sec. 5, Ch. 602, L. 1985; amd. Sec. 6, Ch. 88, L. 1989.

37-31-304. Qualifications of applicants for license to practice. (1) Before a person may practice cosmetology, the person shall obtain a license to practice cosmetology from the department. Before a person may practice manicuring, the person shall obtain a license to practice manicuring from the department unless the person is licensed to practice cosmetology.

(2) (a) To be eligible to take the examination to practice cosmetology, the applicant may not be less than 18 years of age, must be of good moral character, and must possess a high school diploma or the equivalent of a high school diploma recognized by the superintendent of public instruction. A person may apply to the board for an exception to the educational requirement of a high school diploma or the equivalent of a high school diploma. The board shall adopt by rule procedures for granting an exception. The applicant must have completed a course of study of at least 2,000 hours in a registered cosmetology school and must have received a diploma from the cosmetology

school or must have completed the course of study in cosmetology prescribed by the board.

(b) A person qualified under subsection (2)(a) shall file with the department a written application to take the examination and shall deposit with the department the required examination fee and pass an examination as to fitness to practice cosmetology.

(3) (a) To be eligible to take the examination to practice manicuring, an applicant may not be less than 18 years of age; must be of good moral character; possess a high school diploma, the equivalent of a high school diploma recognized by the superintendent of public instruction, or a certificate of completion from a vocational-technical center program; and must have completed a course of study prescribed by the board in a registered school of cosmetology or a registered school of manicuring. A person may apply to the board for an exception to the educational requirement of a high school diploma, the equivalent of a high school diploma, or a vocational-technical center certificate of completion. The board shall adopt by rule procedures for granting an exception.

(b) A person qualified under subsection (3)(a) shall file with the department a written application to take the examination and deposit with the department the required examination fee.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(1); amd. Sec. 2, Ch. 260, L. 1985; amd. Sec. 6, Ch. 602, L. 1985; amd. Sec. 34, Ch. 658, L. 1987; amd. Sec. 1, Ch. 520, L. 1989; amd. Sec. 4, Ch. 473, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 473 in (2)(a), near beginning of first sentence after "moral character, and must" deleted "have completed 2 years of high school or" and after "possess" inserted "a high school diploma or", inserted second and third sentences relating to the educational exception, and in fourth sentence, before "course of study", deleted "continuous", in two places substituted "cosmetology school" for "beauty school", and after "registered cosmetology school" deleted "which course of study has been distributed over a period of not less than 10 months or more than 14 months"; in (3)(a), at end, inserted last two sentences relating to the exception for the educational requirement; and made minor changes in style.

Cross-References

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-31-305. Qualifications of applicants for license to teach. (1) Before a person may teach manicuring to persons seeking only to be licensed to practice manicuring or teach cosmetology, the person shall obtain from the department a license to teach cosmetology.

(2) To be eligible to take an examination to obtain a license to teach cosmetology, a person must:

(a) be a graduate of high school or possess an equivalent of a high school diploma recognized by the superintendent of public instruction; and

(b) (i) have a license to practice cosmetology issued by the department and have received a diploma from a registered school of cosmetology approved by the board, certifying satisfactory completion of 650 hours of student teacher training; or

(ii) have been actively engaged as a cosmetologist for 3 continuous years immediately prior to taking the teachers' examination.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(2); amd. Sec. 5, Ch. 106, L. 1981; amd. Sec. 3, Ch. 260, L. 1985; amd. Sec. 7, Ch. 602, L. 1985; amd. Sec. 5, Ch. 473, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 473 in (2)(b)(ii) substituted "cosmetologist" for "beauty operator"; and made minor changes in style.

Cross-References

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-31-306. Reciprocity. A person who is licensed to practice cosmetology or is licensed as a manager-operator in another state may be eligible for reciprocity licensing in this state if he fulfills the requirements of this chapter and the rules adopted under it, other than those relating to examination. However, he may be licensed without examination only if the state in which he is licensed grants the same privilege to persons licensed in this state who seek licensure as cosmetologists or manager-operators in that state.

History: En. 66-808.1 by Sec. 5, Ch. 533, L. 1977; R.C.M. 1947, 66-808.1; amd. Sec. 6, Ch. 106, L. 1981.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-31-307. Temporary license pending examination. The board may authorize the department to grant to a graduate of a registered school of any state, on the payment of the fee prescribed by law, a temporary license authorizing the graduate to practice cosmetology under the supervision of a licensed cosmetologist in the practice of hairdressing and beauty culture or to practice manicuring under the supervision of a licensed manicurist for a period not to exceed 90 days or until the next examination is held by the department and the results are announced. No temporary license may be issued except on the presentation by the applicant of a certificate of graduation from such a registered school. A temporary license is not renewable.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(5); amd. Sec. 1, Ch. 460, L. 1979; amd. Sec. 7, Ch. 106, L. 1981; amd. Sec. 1, Ch. 29, L. 1989.

37-31-308. Examination — reexamination — exemption for handicapped persons. (1) Examinations for a license to practice cosmetology or manicuring or to teach cosmetology must be held at places and times specified by the board. The examinations must be supervised by the board. The examinations may not be confined to a specific method or system. The examinations must be conducted by persons who hold current licenses to practice in the profession for which the applicant is being examined.

(2) Anyone failing twice to pass the examination for a license to practice cosmetology may not apply to retake the examination:

(a) sooner than 6 months after the date of the second failure; or

(b) until the applicant has taken 200 hours additional training at a registered school of cosmetology approved by the board.

(3) Anyone failing twice to pass the examination for a license to practice manicuring shall meet the additional requirements prescribed by the board before applying to retake the examination.

(4) Anyone failing twice to pass the examination for a license to teach cosmetology shall wait 1 year before reapplying to take the examination. Upon reapplying, the applicant shall provide certification of completion of 500 hours of teacher training during that year in a registered school licensed as a teacher training unit.

(5) Physically handicapped persons trained for cosmetology or manicuring by the department of social and rehabilitation services are, for a period of 1 year immediately following their graduation, exempt from the examination and the fees described in 37-31-323. On certification from the department of social and rehabilitation services that a department of social and rehabilitation services beneficiary has successfully completed the required training in a cosmetology school or manicuring school, the department shall issue the person the necessary certificate or license to practice the profession in this state.

History: (1), (3)En. Sec. 8, Ch. 104, L. 1929; amd. Sec. 1, Ch. 85, L. 1935; re-en. Sec. 3228.8, R.C.M. 1935; amd. Sec. 7, Ch. 222, L. 1939; amd. Sec. 69, Ch. 350, L. 1974; Sec. 66-808, R.C.M. 1947; (2)En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; Sec. 66-803, R.C.M. 1947; R.C.M. 1947, 66-803(4), 66-808; amd. Sec. 8, Ch. 106, L. 1981; amd. Sec. 4, Ch. 260, L. 1985; amd. Sec. 8, Ch. 602, L. 1985; amd. Sec. 7, Ch. 88, L. 1989; amd. Sec. 6, Ch. 473, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 473 in (5), near end, substituted "cosmetology school" for "beauty school"; and made minor changes in style.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

37-31-309. Booth rental license. No person may receive a booth rental license under 37-31-302 without proving to the satisfaction of the board that the booth will be used and maintained in compliance with the rules and regulations promulgated by the board, including sanitary rules prescribed under 37-31-204.

History: En. Sec. 9, Ch. 88, L. 1989.

37-31-310 reserved.

37-31-311. Schools — certificate of registration — requirements — bond — curriculum. (1) A person, firm, partnership, or corporation may not operate a school for the purpose of teaching cosmetology for compensation or for the purpose of teaching manicuring for compensation unless a certificate of registration has been first obtained from the department. Application for the certificate must be filed with the department on a form prescribed by the board.

(2) A school for teaching cosmetology may not be granted a certificate of registration unless it complies or can comply with the following requirements:

(a) It has in its employ either a licensed teacher who is at all times in the immediate supervision of the work of the school or other teachers who the board determines are necessary for the proper conduct of the school. There may not be more than 25 students to each teacher.

(b) It possesses apparatus and equipment the board determines necessary for the ready and full teaching of all subjects or practices of cosmetology.

(c) It maintains a school term of not less than 2,000 hours and prescribes a course of practical training and technical instruction equal to the requirements for board examinations, which course of training and technical instruction must be prescribed by the board.

(d) It keeps a daily record of the attendance of each student, establishes grades, and holds examinations before issuing diplomas.

(e) An owner or person in charge of a school of cosmetology may not permit a person to sleep in or use for residential purposes or for any other purpose that would make the room unsanitary a room used wholly or in part for a school of cosmetology.

(3) A school for teaching manicuring may not be granted a certificate of registration unless it complies with subsections (2)(a) and (2)(d) and the following requirements:

(a) It possesses apparatus and equipment the board determines necessary for the ready and full teaching of all subjects or practices of manicuring.

(b) It maintains a school term and a course of practical training and technical instruction as prescribed by the board.

(c) An owner or person in charge of a school of manicuring may not permit a person to sleep in or use for residential purposes or for any other purpose that would make the room unsanitary a room used wholly or in part for a school of manicuring.

(4) Licenses or certificates of registration for schools of cosmetology and schools of manicuring may be refused, revoked, or suspended, as provided in 37-31-331.

(5) A teacher or student teacher may not be permitted to practice cosmetology or manicuring on the public in a school of cosmetology or a school of manicuring. A school that enrolls student teachers for a course of student teacher training may not have, at any one time, more than one student teacher for each full-time licensed teacher actively engaged at the school. The student teachers may not substitute for full-time teachers.

(6) The board may make further rules necessary for the proper conduct of schools of cosmetology and schools of manicuring.

(7) The board shall require the person, firm, partnership, or corporation operating a school of cosmetology or a school of manicuring to furnish a good and sufficient bond in the amount of $5,000 and in a form and manner prescribed by the board.

(8) A professional cosmetology salon or manicuring salon may not be operated in connection with a school of cosmetology or school of manicuring.

(9) The board may, by rule, establish a suitable curriculum for teachers' training in registered schools of cosmetology.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(6) thru (8); amd. Sec. 9, Ch. 602, L. 1985; amd. Sec. 7, Ch. 473, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 473 in (8) substituted "cosmetology salon" for "beauty shop" and substituted "manicuring salon" for "manicuring shop"; and made minor changes in style.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-31-312. Inspection. (1) The department shall appoint one or more inspectors, each of whom shall devote time to inspecting cosmetology salons and performing other duties as the department, in cooperation with the board, may direct. The inspectors may enter a cosmetology salon, manicuring salon, booth, school of cosmetology, or school of manicuring during business hours for the purpose of inspection, and the refusal of a licensee to permit the inspection during business hours is cause for revocation of the license.

(2) Upon application for a license, a cosmetology salon or manicuring salon shall pay an initial inspection fee prescribed by the board.

(3) The board may authorize the department to grant to a cosmetology salon or manicuring salon, upon payment of the initial inspection fee, a temporary permit authorizing the cosmetology salon or manicuring salon to operate for a period not to exceed 90 days or until the inspector is able to make the inspection, whichever event occurs first. This temporary permit is not renewable.

(4) The department shall cause an inspector, appointed as provided in subsection (1), to conduct an annual inspection of each cosmetology salon and manicuring salon in the state.

History: (1)En. Sec. 13, Ch. 104, L. 1929; re-en. Sec. 3228.13, R.C.M. 1935; amd. Sec. 11, Ch. 222, L. 1939; amd. Sec. 73, Ch. 350, L. 1974; Sec. 66-813, R.C.M. 1947; (2), (3)En. Sec. 66-813.1 by Sec. 2, Ch. 85, L. 1974; amd. Sec. 2, Ch. 305, L. 1977; Sec. 66-813.1, R.C.M. 1947; R.C.M. 1947, 66-813, 66-813.1; (4)En. Sec. 9, Ch. 106, L. 1981; amd. Sec. 56, Ch. 345, L. 1981; amd. Sec. 5, Ch. 260, L. 1985; amd. Sec. 10, Ch. 602, L. 1985; amd. Sec. 8, Ch. 88, L. 1989; amd. Sec. 1, Ch. 458, L. 1991; amd. Sec. 8, Ch. 473, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 473 throughout section substituted references to cosmetology salons for references to beauty parlors and cosmetological establishments and substituted "manicuring salon" for "manicuring shop"; and made minor changes in style.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-31-313 through 37-31-320 reserved.

37-31-321. Issuance of licenses and certificates. If the board finds that an applicant for examination or for certificate of registration has complied with the requirements of this chapter and has paid the required fee, the board shall admit the applicant to examination and shall authorize the department to issue a license or certificate of registration to those who have successfully passed the examination or are entitled to the certificate of registration under this chapter.

History: En. Sec. 7, Ch. 104, L. 1929; re-en. Sec. 3228.7, R.C.M 1935; amd. Sec. 6, Ch. 222, L. 1939; amd. Sec. 68, Ch. 350, L. 1974; R.C.M. 1947, 66-807.

37-31-322. Renewal — continuing education — delinquency fee. (1) Licenses and certificates may be issued for no longer than 1 year unless otherwise provided by rule. Licenses and certificates expire on December 31 unless otherwise provided by rule or renewed for the next year or renewal period. Licenses and certificates may be renewed by application made prior to December 31 of each year, unless otherwise provided, and by the payment of a required renewal fee. Expired licenses and certificates may be renewed under rules made by the board, but the right to renew an expired license or certificate terminates after 10 years of nonpayment. The board may provide by rule for a change in the renewal date and renewal period for the manager-operator and salon owner category. The renewal fee may not exceed twice the fee for a 2-year renewal or three times the fee for a 3-year renewal and must be as set by the board.

(2) In addition to the foregoing requirements for renewal, persons applying for the renewal of licenses to teach cosmetology must have fulfilled the following additional requirements:

(a) During each year, an active teacher, either full-time or part-time, must have successfully completed 15 hours' professional teacher training at a school approved by the board.

(b) A person holding a license to teach cosmetology but not actively engaged either full-time or part-time in teaching cosmetology or manicuring during the preceding year may renew the license by paying the required fee. A person holding a license to teach cosmetology but not actively engaged in teaching cosmetology or manicuring either full-time or part-time for the preceding year or longer and wishing to resume active teaching of cosmetology or manicuring must successfully complete 30 hours' professional teacher training at a school approved by the board before resuming active teaching. However, the foregoing provisions do not prevent the board, under rules it adopts, from permitting a person who holds a license to teach cosmetology and who is not actively engaged either full-time or part-time in teaching cosmetology or manicuring from teaching as a substitute for an active teacher.

(3) A fee prescribed by the board must be charged, in addition to other fees fixed by law, for renewal applications of licenses and certificates made after December 31 of each year or other predetermined renewal deadline.

History: En. Sec. 16, Ch. 104, L. 1929; re-en. Sec. 3228.16, R.C.M. 1935; amd. Sec. 13, Ch. 222, L. 1939; amd. Sec. 1, Ch. 115, L. 1961; amd. Sec. 1, Ch. 132, L. 1967; amd. Sec. 75, Ch. 350, L. 1974; amd. Sec. 3, Ch. 305, L. 1977; R.C.M. 1947, 66-816; amd. Sec. 16, Ch. 22, L. 1979; amd. Sec. 57, Ch. 345, L. 1981; amd. Sec. 6, Ch. 260, L. 1985; amd. Sec. 11, Ch. 602, L. 1985; amd. Sec. 9, Ch. 473, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 473 in (2)(a) decreased number of hours from 30 to 15; and made minor changes in style.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-31-323. Fees. (1) Fees for licenses and certificates of registration shall be paid to the department in amounts prescribed by the board.

(2) The license and registration fees shall be paid annually, unless otherwise provided by board rule, in advance to the department.

(3) No other or additional license or registration fee may be imposed by a municipal corporation or other political subdivision of this state for the practice or teaching of cosmetology.

History: En. Sec. 15, Ch. 104, L. 1929; re-en. Sec. 3228.15, R.C.M. 1935; amd. Sec. 12, Ch. 222, L. 1939; amd. Sec. 3, Ch. 80, L. 1941; amd. Sec. 3, Ch. 20, L. 1955; amd. Sec. 2, Ch. 140, L. 1959; amd. Sec. 1, Ch. 131, L. 1963; amd. Sec. 1, Ch. 324, L. 1971; amd. Sec. 74, Ch. 350, L. 1974; amd. Sec. 4, Ch. 533, L. 1977; R.C.M. 1947, 66-815; amd. Sec. 10, Ch. 106, L. 1981; amd. Sec. 58, Ch. 345, L. 1981.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-31-324. Deposit of fees. All fees collected by the department under this chapter shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 9, Ch. 104, L. 1929; re-en. Sec. 3228.9, R.C.M. 1935; amd. Sec. 8, Ch. 222, L. 1939; amd. Sec. 135, Ch. 147, L. 1963; amd. Sec. 1, Ch. 133, L. 1967; amd. Sec. 1, Ch. 224, L. 1974; amd. Sec. 70, Ch. 350, L. 1974; amd. Sec. 28, Ch. 439, L. 1975; amd. Sec. 1, Ch. 531, L. 1977; R.C.M. 1947, 66-809(part); amd. Sec. 1, Ch. 277, L. 1983.

37-31-325 through 37-31-330 reserved.

37-31-331. Refusal, revocation, or suspension of licenses — grounds — notice and hearing. (1) The board may refuse to issue, may refuse to renew, or may revoke or suspend a license in any one of the following cases:

(a) failure of a person, firm, partnership, or corporation operating a cosmetology salon, manicuring salon, school of cosmetology, or school of manicuring to comply with this chapter;

(b) failure to comply with the sanitary rules adopted by the board and approved by the department of health and environmental sciences for the regulation of cosmetology salons, manicuring salons, schools of cosmetology, or schools of manicuring;

(c) gross malpractice;

(d) continued practice by a person knowingly having an infectious or contagious disease;

(e) habitual drunkenness or habitual addiction to the use of morphine or any habit-forming drug;

(f) permitting a certificate of registration or license to be used where the holder is not personally, actively, and continuously engaged in business; or

(g) failure to display the license.

(2) However, the board may not refuse to authorize the department to issue or renew a license or revoke or suspend a license already issued until after notice and opportunity for a hearing.

History: En. Sec. 11, Ch. 104, L. 1929; re-en. Sec. 3228.11, R.C.M. 1935; amd. Sec. 10, Ch. 222, L. 1939; amd. Sec. 71, Ch. 350, L. 1974; R.C.M. 1947, 66-811; amd. Sec. 12, Ch. 602, L. 1985; amd. Sec. 10, Ch. 473, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 473 in (1)(a) substituted "cosmetology salon" for "cosmetological establishment" and substituted "manicuring salon" for "manicuring shop"; in (1)(b) substituted "cosmetology salons" for "cosmetological establishments" and substituted "manicuring salons" for "manicuring shops"; and made minor changes in style.

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of Director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-31-332. Suspension for contracting communicable disease. If a licensee contracts a communicable disease endangering the public health, the board shall, on proof of it, cancel or suspend his license until the licensee can secure a physician's certificate showing that he is free from a communicable disease.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(9).

37-31-333. Appeal from actions of board. An appeal may be taken from any actions of the board to the district court of the county in which the applicant resides.

History: En. Sec. 14, Ch. 104, L. 1929; re-en. Sec. 3228.14, R.C.M. 1935; R.C.M. 1947, 66-814.

Cross-References

Judicial review of contested cases, Title 2, ch. 4, part 7.

37-31-334. Penalty — injunction. (1) The commission of any of the acts prohibited as provided in 37-31-301 or the violation of any other provision in this chapter shall be a misdemeanor punishable by a fine or imprisonment or both fine and imprisonment.

(2) Regardless of any penalties provided in this chapter and as an additional remedy, the district courts of the state of Montana are vested with jurisdiction to restrain and enjoin any violation or threatened violation of the requirements of this chapter as a nuisance per se or otherwise and the board, the attorney general, or any county attorney may institute proceedings in equity for the purpose of obtaining equitable relief against violations of the provisions of this chapter.

History: En. Sec. 17, Ch. 104, L. 1929; amd. Sec. 1, Ch. 13, L. 1931; re-en. Sec. 3228.17, R.C.M. 1935; amd. Sec. 14, Ch. 222, L. 1939; amd. Sec. 1, Ch. 140, L. 1959; R.C.M. 1947, 66-817(C), (D).

Cross-References

Duties of Attorney General, 2-15-501.

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Nuisances, Title 27, ch. 30.

Disciplinary authority of boards — injunctions, 37-1-136.

Penalty when none specified, 46-18-212.

CHAPTER 32

ELECTROLOGY

Part 1 — General

37-32-101. Purpose.
37-32-102. Definitions.
37-32-103. Exemptions.

Part 2 — Board of Cosmetologists

37-32-201. Rulemaking power.

Part 3 — Licensing

37-32-301. License required.
37-32-302. Qualifications — examination — issuance of license.
37-32-303. Reciprocity.
37-32-304. Electrology salon or school license required.
37-32-305. Fees — renewal — deposit of moneys collected.
37-32-306. Inspection.
37-32-307 through 37-32-309 reserved.
37-32-310. Refusal, revocation, or suspension of licenses — grounds — notice and hearing.
37-32-311. Penalty.

Part 1

General

37-32-101. Purpose. The legislature finds and declares that the practice of electrology in Montana affects the public health, safety, and welfare and should therefore be subject to regulation and control in the public interest in order to protect the public from the unauthorized and unqualified practice of electrology.

History: En. 66-3601 by Sec. 1, Ch. 143, L. 1975; R.C.M. 1947, 66-3601.

37-32-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Approved school" means a school which the board has approved as having a course of instruction or education and training in electrology which meets the criteria established by the board.

(2) "Board" means the board of cosmetologists.

(3) "Department" means the department of commerce.

(4) "Electrology" means the study and professional practice of permanently removing superfluous hair by destroying the hair roots by passage of an electric current with an electrified needle. Electrology as defined in this chapter shall include electrolysis and/or thermolysis. Electrology does not include the practice of pilethermology, which is the study and professional practice of removing superfluous hair by passage of radio frequency energy with electronic tweezers and similar devices.

History: En. 66-3602 by Sec. 2, Ch. 143, L. 1975; R.C.M. 1947, 66-3602; amd. Sec. 1, Ch. 482, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 412, L. 1981.

37-32-103. Exemptions. Nothing in this chapter prevents a licensed medical doctor from performing the work of an electrologist.

History: En. 66-3603 by Sec. 3, Ch. 143, L. 1975; R.C.M. 1947, 66-3603(2); amd. Sec. 11, Ch. 106, L. 1981.

Part 2
Board of Cosmetologists

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1857.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-32-201. Rulemaking power. (1) The board may adopt rules in accordance with the Montana Administrative Procedure Act to implement this chapter and to properly regulate this profession.

(2) Rules adopted by the board may provide for:

(a) the conduct of board business;

(b) the qualifications, examination, and licensure of applicants to practice or teach electrology;

(c) standards and requirements for licensure of premises to be used for the practice or teaching of electrology;

(d) the curriculum and conduct of schools of electrology;

(e) sanitary standards for licensees, salons, and schools, with particular reference to the precautions necessary to prevent the creation and spread of infectious and contagious diseases; and

(f) the conduct of persons, salons, and schools licensed under this chapter.

History: En. 66-3607 by Sec. 7, Ch. 143, L. 1975; amd. Sec. 32, Ch. 101, L. 1977; R.C.M. 1947, 66-3607(1); amd. Sec. 1, Ch. 40, L. 1985.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Duties of boards, 37-1-131.

Part 3
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-32-301. License required. (1) No person may represent himself to be an electrologist or engage in the practice or teaching of electrology unless he is licensed under this chapter.

(2) Applications for licensure or renewal of a license must be made to the department on forms provided by the department. The application must be accompanied by the appropriate fee.

History: En. 66-3603 by Sec. 3, Ch. 143, L. 1975; R.C.M. 1947, 66-3603(1); amd. Sec. 2, Ch. 40, L. 1985.

37-32-302. Qualifications — examination — issuance of license. (1) Before a license to practice electrology is granted, the applicant shall meet all of the following requirements:

(a) be at least 18 years of age;

(b) furnish satisfactory evidence of education, instruction, training, and experience in the field of electrology as the board may fix by rule;

(c) pass an examination to the satisfaction of the board in the field of electrology if it is required by the board.

(2) The department shall issue the electrologist license only after it is granted by the board and all requirements of this chapter have been met.

History: En. 66-3604 by Sec. 4, Ch. 143, L. 1975; R.C.M. 1947, 66-3604.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

License investigation and review — record access, 37-1-135.

37-32-303. Reciprocity. Reciprocal electrology licenses may be granted by the board where the individual has a valid license from another state and has fulfilled requirements of this profession similar to those provided in this chapter.

History: En. 66-3606 by Sec. 6, Ch. 143, L. 1975; R.C.M. 1947, 66-3606.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-32-304. Electrology salon or school license required. (1) The premises in which an electrologist or electrologists may practice must be licensed in accordance with rules adopted by the board. Rules adopted by the board shall provide for equipment standards and sanitary rules so that the health of the individual patron is properly protected.

(2) The premises in which electrology is taught must be licensed in accordance with rules adopted by the board pursuant to 37-32-201.

(3) Applications for licensure or renewal under this section must be made to the department on forms provided by the department. Applications must be accompanied by the proper licensure or renewal fee and the inspection fee required by 37-32-306.

History: En. 66-3605 by Sec. 5, Ch. 143, L. 1975; R.C.M. 1947, 66-3605; amd. Sec. 3, Ch. 40, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-32-305. Fees — renewal — deposit of moneys collected. (1) The fee for an original electrologist license shall be set by the board. The renewal shall be automatic, unless revoked or suspended for cause, and the renewal fee shall be set by the board.

(2) The fee for an original electrologist salon license shall be the same as that for cosmetology salons. The renewal fee shall be the same as that for cosmetology salons.

(3) All licenses issued under this chapter expire on December 31 and shall be renewed annually. Failure to renew on or before December 31 shall cause a late renewal fee prescribed by the board to be added to the regular renewal

fee. The right to renew by payment of the late renewal fee expires after 3 years of nonpayment.

(4) All fees or moneys collected by the department under this chapter shall be deposited in the state special revenue fund for the use of the board in administration of the chapter.

History: En. 66-3608 by Sec. 8, Ch. 143, L. 1975; amd. Sec. 11, Ch. 533, L. 1977; R.C.M. 1947, 66-3608; amd. Sec. 59, Ch. 345, L. 1981; amd. Sec. 1, Ch. 277, L. 1983.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-32-306. Inspection. (1) The department shall appoint inspectors to inspect electrology schools and salons and perform other duties as the department may direct. Inspectors may enter electrology salons and schools during business hours for the purpose of evaluating whether the premises qualify for licensure or otherwise meet standards established by the board.

(2) Upon application for issuance of a license, an electrology salon or school shall pay an inspection fee prescribed by the board.

(3) The board may authorize the department to grant an electrology salon or school, upon payment of an inspection fee, a temporary permit authorizing the electrology establishment to operate for a period of not to exceed 90 days or until an inspector is able to make the inspection, whichever event occurs first. This temporary permit is not renewable.

(4) The board may conduct periodic inspections of electrology salons and schools within this state to determine compliance with this chapter and rules adopted to implement it.

History: En. Sec. 4, Ch. 40, L. 1985.

37-32-307 through 37-32-309 reserved.

37-32-310. Refusal, revocation, or suspension of licenses — grounds — notice and hearing. (1) The board may deny, refuse to renew, revoke, suspend, or take other disciplinary action against a licensee in any of the following cases:

(a) failure of a person, firm, partnership, or corporation operating an electrology salon or school of electrology to comply with this chapter or rules adopted under this chapter;

(b) failure to comply with sanitary rules adopted by the board for the regulation of electrology salons or schools of electrology;

(c) gross malpractice or repeated malpractice;

(d) continued practice by a person knowingly having an infectious or contagious disease;

(e) habitual drunkenness or addiction to any habit-forming drug;

(f) permitting a license to be used when the holder is not personally, actively, and continuously engaged in business;

(g) unprofessional conduct as defined by rules of the board; or

(h) failure to display the license.

(2) Title 2, chapter 4, part 6, applies to all contested cases under this chapter.

History: En. Sec. 5, Ch. 40, L. 1985.

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of Director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-32-311. Penalty. Violation of this chapter or of the rules adopted under it is a misdemeanor punishable by a fine, imprisonment, or by both fine and imprisonment.

History: En. 66-3607 by Sec. 7, Ch. 143, L. 1975; amd. Sec. 32, Ch. 101, L. 1977; R.C.M. 1947, 66-3607(2).

Cross-References

Reporting disciplinary actions against licensees, 37-1-105.

Disciplinary authority of boards — injunctions, 37-1-136.

Penalty when none specified, 46-18-212.

CHAPTER 33

MASSAGE THERAPY

(Repealed. Sec. 7, Ch. 84, L. 1983)

Chapter Compiler's Comments

Histories of Repealed Sections:

37-33-101. En. Sec. 1, Ch. 302, L. 1967; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2901.

37-33-102. En. Sec. 2, Ch. 302, L. 1967; amd. Sec. 1, Ch. 321, L. 1974; amd. Sec. 283, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2902.

37-33-103. En. Sec. 14, Ch. 302, L. 1967; amd. Sec. 8, Ch. 321, L. 1974; R.C.M. 1947, 66-2914; amd. Sec. 1, Ch. 32, L. 1979.

37-33-104. En. Sec. 8, Ch. 302, L. 1967; amd. Sec. 5, Ch. 321, L. 1974; amd. Sec. 289, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2908(part).

37-33-201. En. Sec. 4, Ch. 302, L. 1967; amd. Sec. 1, Ch. 243, L. 1973; amd. Sec. 2, Ch. 321, L. 1974; amd. Sec. 285, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2904(1), (2).

37-33-202. En. Sec. 10, Ch. 302, L. 1967; amd. Sec. 7, Ch. 321, L. 1974; amd. Sec. 291, Ch. 350, L. 1974; amd. Sec. 43, Ch. 439, L. 1975; R.C.M. 1947, 66-2910(3), (4); amd. Sec. 26, Ch. 474, L. 1981.

37-33-203. En. Sec. 11, Ch. 302, L. 1967; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2911.

37-33-204. En. Sec. 4, Ch. 302, L. 1967; amd. Sec. 1, Ch. 243, L. 1973; amd. Sec. 2, Ch. 321, L. 1974; amd. Sec. 285, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2904(3).

37-33-301. En. Sec. 5, Ch. 302, L. 1967; amd. Sec. 3, Ch. 321, L. 1974; amd. Sec. 286, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2905(1).

37-33-302. En. Sec. 6, Ch. 302, L. 1967; amd. Sec. 4, Ch. 321, L. 1974; amd. Sec. 287, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2906; amd. Sec. 60, Ch. 345, L. 1981.

37-33-303. En. Sec. 5, Ch. 302, L. 1967; amd. Sec. 3, Ch. 321, L. 1974; amd. Sec. 286, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2905(2).

37-33-304. En. Sec. 7, Ch. 302, L. 1967; amd. Sec. 288, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2907.

37-33-305. En. Sec. 12, Ch. 302, L. 1967; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2912; amd. Sec. 61, Ch. 345, L. 1981.

37-33-306. En. Sec. 9, Ch. 302, L. 1967; amd. Sec. 6, Ch. 321, L. 1974; amd. Sec. 290, Ch. 350, L. 1974; amd. Sec. 10, Ch. 533, L. 1977; R.C.M. 1947, 66-2909; amd. Sec. 2, Ch. 32, L. 1979; amd. Sec. 62, Ch. 345, L. 1981.

37-33-307. En. Sec. 10, Ch. 302, L. 1967; amd. Sec. 7, Ch. 321, L. 1974; amd. Sec. 291, Ch. 350, L. 1974; amd. Sec. 43, Ch. 439, L. 1975; R.C.M. 1947, 66-2910(1), (2).

37-33-308 through 37-33-310 reserved.

37-33-311. En. Sec. 8, Ch. 302, L. 1967; amd. Sec. 5, Ch. 321, L. 1974; amd. Sec. 289, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2908(part).

37-33-312. En. Sec. 13, Ch. 302, L. 1967; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2913.

CHAPTER 34

CLINICAL LABORATORY SCIENCE PRACTITIONERS

Part 1 — General

37-34-101. Short title.
37-34-102. Declaration of policy and purpose.
37-34-103. Definitions.

Part 2 — Board of Clinical Laboratory Science Practitioners

37-34-201. Powers and duties of the board — rulemaking authority.

Part 3 — Licensing

37-34-301. License required.
37-34-302. Exemptions.
37-34-303. Standards for licensure.
37-34-304. Waiver of requirements — temporary license — reciprocity.
37-34-305. Licensure application procedures.
37-34-306. Disciplinary measures — grounds — fine.
37-34-307. Violation — penalties — injunction — manner of charging violation.
37-34-308. Due process procedures — hearing — temporary suspension.

Part 1

General

37-34-101. Short title. This chapter may be cited as the "Clinical Laboratory Science Practice Act".

History: En. Sec. 1, Ch. 345, L. 1993.

37-34-102. Declaration of policy and purpose. The legislature finds and declares that because the practice of clinical laboratory science affects the public health, safety, and welfare of Montana citizens, it is the purpose of this chapter to provide for the common good by regulating and ensuring the qualified and professional practice of clinical laboratory science. The legislature further declares that because clinical laboratory science practitioners provide essential services to other health care providers by furnishing vital information that may be used in the assessment of human health and in the diagnosis, prevention, and treatment of disease or impairment, clinical laboratory tests must be performed by individuals who meet specific standards of competency.

History: En. Sec. 2, Ch. 345, L. 1993.

37-34-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of clinical laboratory science practitioners established in 2-15-1863.

(2) "Clinical laboratory" or "laboratory" means any facility or office in which clinical laboratory tests are performed.

(3) (a) "Clinical laboratory science practitioner" means a health care professional who performs clinical laboratory tests or who is engaged in management, education, consulting, or research in clinical laboratory science.

(b) The term includes laboratory directors, managers, supervisors, clinical laboratory scientists, clinical laboratory specialists, and clinical laboratory technicians who work in a laboratory.

(c) The term does not include:

(i) persons employed by a clinical laboratory to perform supportive functions not related to direct performance of laboratory tests; or

(ii) clinical laboratory trainees.

(4) "Clinical laboratory scientist" means a person who:

(a) performs clinical laboratory tests pursuant to established and approved protocols requiring the exercise of independent judgment and responsibility;

(b) maintains equipment and records;

(c) performs quality assurance activities related to test performance; and

(d) may supervise and teach within a clinical laboratory setting.

(5) "Clinical laboratory specialist" means a person who:

(a) performs laboratory testing in a specialized testing area, such as microbiology, chemistry, immunology, or hematology, according to approved protocols requiring the exercise of independent judgment and responsibility;

(b) maintains equipment and records;

(c) performs quality assurance activities related to test performance; and

(d) may supervise and teach within the specific area of the clinical laboratory.

(6) "Clinical laboratory technician" means a person who performs laboratory tests pursuant to established and approved protocols that require limited exercise of independent judgment and that are performed under the supervision of a clinical laboratory scientist, laboratory supervisor, or laboratory director.

(7) "Clinical laboratory test" or "laboratory test" means:

(a) a microbiological, serological, chemical, hematological, radiobioassay, cytological, biophysical, immunological, cytogenetical, or other examination that is performed on material derived from the human body; or

(b) any other test or procedure conducted by a laboratory or facility that provides information for the assessment of a medical condition or for the diagnosis, prevention, or treatment of a disease.

(8) "Department" means the department of commerce provided for in 2-15-1801.

(9) "License" means the clinical laboratory science license issued under this chapter.

(10) "Practice of clinical laboratory science" means the performance and interpretation of microbiological, serological, chemical, hematological, radiobioassay, cytological, biophysical, immunological, cytogenetical, or other examination on material that is derived from the human body and that

provides information for the assessment of a medical condition or for the diagnosis, prevention, or treatment of a disease.

History: En. Sec. 3, Ch. 345, L. 1993.

Part 2

Board of Clinical Laboratory Science Practitioners

37-34-201. Powers and duties of the board — rulemaking authority. (1) The board shall:

(a) meet at least once annually, and at other times as agreed upon, to elect officers and to perform the duties described in this section; and

(b) administer oaths, take affidavits, summon witnesses, and take testimony as to matters within the scope of the board's duties.

(2) The board has the authority to administer and enforce all the powers and duties granted statutorily or adopted administratively.

(3) The board shall adopt rules to administer this chapter. The rules must include but are not limited to:

(a) the development of a license application procedure and acceptable certifications for each category of license;

(b) the establishment of license fees commensurate with actual costs;

(c) the establishment of criteria for educational requirements that, at a minimum, meet the standards set forth in 37-34-303;

(d) the development of procedures for the issuance, renewal, suspension, revocation, and reciprocity of licenses;

(e) the adoption of disciplinary standards for licensees;

(f) the establishment of investigatory and hearing procedures for processing complaints received by the board;

(g) the establishment of continuing education requirements of at least 14 hours annually for license renewal for clinical laboratory practitioners; and

(h) a requirement that the supervisor of a clinical laboratory technician be accessible at all times that testing is being performed by the technician in order to provide onsite, telephonic, or electronic consultation.

History: En. Sec. 7, Ch. 345, L. 1993.

Compiler's Comments

Effective Date: Section 16, Ch. 345, L. 1993, provided that this section was effective on passage and approval. Approved April 16, 1993.

Cross-References

Board — composition — allocation — quasi-judicial — compensation, 2-15-1863.

Part 3

Licensing

37-34-301. License required. A person may not engage in the practice of clinical laboratory science or hold out to the public that the person is a clinical laboratory science practitioner in this state unless the person is licensed pursuant to this chapter.

History: En. Sec. 4, Ch. 345, L. 1993.

37-34-302. Exemptions. (1) This chapter does not limit or regulate the practice of licensed physicians, including but not limited to pathologists.

(2) This chapter does not apply to:

(a) any other profession licensed under Title 37 to the extent that the applicable scope of that practice, as defined by statute, rules of the board or agency governing the other profession, or both the statute and rules, authorizes the performance of a clinical laboratory test;

(b) clinical laboratory science practitioners employed by the United States or by any bureau, division, or agency of the United States, while in the discharge of the employee's official duties;

(c) clinical laboratory science practitioners engaged in teaching or research, provided that the results of any examination performed are not used in health maintenance, diagnosis, or treatment of disease;

(d) students or trainees enrolled in a clinical laboratory science education or training program, provided that:

(i) these activities constitute a planned course in the program;

(ii) the persons are designated by a title, such as intern, trainee, or student; and

(iii) the persons work directly under an individual licensed by this state to practice clinical laboratory science;

(e) any person performing only waived tests as provided for in the federal clinical laboratory regulations set forth in 42 CFR part 493;

(f) a perfusionist or cardiopulmonary technician who, as part of a surgical team, performs laboratory tests in an operating room during surgery or during the perioperative and immediate postoperative period; or

(g) clinical laboratory science practitioners, employed by certified rural health clinics, who perform only those basic laboratory services required under federal regulations set forth in 42 CFR 491.9(c)(2).

History: En. Sec. 5, Ch. 345, L. 1993.

37-34-303. Standards for licensure. (1) The board shall issue a clinical laboratory scientist license to an individual who meets the qualifications as promulgated by rules of the board. At a minimum, a licensee must be a person who:

(a) has graduated with a baccalaureate degree, including a minimum number of hours in areas or disciplines established by rule by the board; and

(b) has passed a certifying examination approved by the board.

(2) The board shall issue a clinical laboratory specialist license to an individual who has graduated with a baccalaureate degree as described in subsection (1) and has passed a certifying examination covering those fields in which the applicant is eligible and approved by the board. The license must be issued as a clinical laboratory specialist license and must state the designation of the area of specialty.

(3) The board shall issue a clinical laboratory technician license to an individual who meets the qualifications promulgated by the board, including the following minimum qualifications:

(a) completion of an associate degree or 60 semester hours in a science-related discipline;

(b) completion of other equivalent formal education as approved by the board; and

(c) passing a certifying examination approved by the board.

History: En. Sec. 8, Ch. 345, L. 1993.

37-34-304. Waiver of requirements — temporary license — reciprocity. (1) Upon payment of a license fee, the board may issue a license to a person engaged in the practice of clinical laboratory science on October 1, 1993, if the applicant can provide documentation, verified by oath, of at least 1 year of full-time experience in clinical laboratory science in Montana within the last 3 years. The applicant's level of practice on October 1, 1993, determines the type of license issued. Application for licensure under this provision must be completed within 1 year of October 1, 1993.

(2) (a) Upon payment of a license fee, the board may issue a temporary license to a person who engaged in the practice of clinical laboratory science in another state if that person can provide documentation, verified by oath, of at least 1 year of full-time experience in clinical laboratory science within the last 3 years. A temporary license may not be valid for more than 15 months.

(b) A temporary licensee shall pass a board-approved certification examination within 15 months of receiving a temporary license.

(3) Upon payment of the license fee, the board may issue a license to practice clinical laboratory science to an applicant who is currently licensed to practice clinical laboratory science in another state, territory, or country if the qualifications for the other license are considered by the board to be equal to or exceed the requirements of this chapter and if the other state, territory, or country extends similar privileges to clinical laboratory science practitioners licensed under this chapter.

History: En. Sec. 9, Ch. 345, L. 1993.

37-34-305. Licensure application procedures. (1) An applicant shall submit an application for a license to the board upon the forms prescribed and furnished by the board and shall pay an application fee set by the board.

(2) Upon receipt of the application and fee, the board shall issue a license for a clinical laboratory scientist, a clinical laboratory specialist, or a clinical laboratory technician to any person who meets the qualifications specified by the board as set forth in rules adopted by the board pursuant to 37-34-201 and 37-34-303.

(3) A license issued under this chapter must be renewed by May 1 of each year.

(4) Except for the assessment provided in 37-1-101(6), money paid for application, license, and license renewal fees must be deposited in the state special revenue fund for use by the board.

History: En. Sec. 10, Ch. 345, L. 1993.

37-34-306. Disciplinary measures — grounds — fine. (1) The board, after notice and hearing, may reprimand a licensee or deny, suspend, revoke, or refuse to renew the license of a licensee who:

(a) uses alcohol or other drugs to the extent that job performance is impaired;

(b) is guilty of immoral or unprofessional conduct as defined by board rule;

(c) is guilty of gross negligence in the practice of clinical laboratory science;

(d) has obtained or attempted to obtain a license by fraud or material misrepresentation;

(e) is guilty of conduct detrimental to the best interests of the public; or

(f) has violated a provision of this chapter or a rule adopted by the board.

(2) The board may impose an administrative fine of not more than $500 per incident for any violation that could result in the suspension or revocation of a license. A fine collected under this subsection must be deposited in the state special revenue fund for use by the board.

History: **En. Sec. 11, Ch. 345, L. 1993.**

37-34-307. Violation — penalties — injunction — manner of charging violation. (1) A person who violates a provision of this chapter or a rule adopted pursuant to this chapter is guilty of a misdemeanor and is punishable by a fine not to exceed $500, by imprisonment in the county jail for a term of not more than 6 months, or both.

(2) Except as provided in 37-34-302, the board may maintain an action to enjoin a person from engaging in the practice of clinical laboratory science until a license to practice is obtained. A person who has been enjoined and who violates the injunction is punishable for contempt of court. The injunction does not relieve the person practicing clinical laboratory science without a license from criminal prosecution. The remedy by injunction is in addition to remedies provided for criminal prosecution of the offender.

(3) When charging a person in a complaint for injunction or in an affidavit, information, or indictment with a violation of law by practicing clinical laboratory science without a license, it is sufficient to charge that the person did, on a certain day and in a certain county, engage in the practice of clinical laboratory science while not having a license to do so, without specifying particular facts concerning the violation.

History: **En. Sec. 12, Ch. 345, L. 1993.**

37-34-308. Due process procedures — hearing — temporary suspension. (1) The proceedings for the revocation, suspension, or limiting of a license may be initiated by the board or by any person, corporation, association, or public officer by filing written charges with the board. The board may in all cases conduct an investigation of the allegations in the written charges and dismiss those that it determines are frivolous or without sufficient factual foundation.

(2) A license may not be revoked, suspended, or limited without a hearing before the board after charges are filed. If the board finds that there is a significant threat to the public health, the board, upon notice to the licensee, may temporarily suspend the license without a hearing for a period not to exceed 30 days.

History: **En. Sec. 13, Ch. 345, L. 1993.**

CHAPTERS 35 THROUGH 39

RESERVED

CHAPTER 40

SANITARIANS

Part 1 — General

37-40-101. Definitions.
37-40-102. Exemptions.

Part 2 — Board of Sanitarians

37-40-201. Chairman — meetings.
37-40-202. Compensation — expenses.
37-40-203. Rulemaking power.

Part 3 — Licensing

37-40-301. License required.
37-40-302. Application — examination — certificate.
37-40-303. Licensing sanitarians from other states.
37-40-304. Fees — renewal.
37-40-305. Deposit of fees.
37-40-306. Repealed.
37-40-307. Repealed.
37-40-308 through 37-40-310 reserved.
37-40-311. Suspension or revocation of license.
37-40-312. Penalty.

Chapter Cross-References

Publicly employed sanitarians to cooperate concerning water quality, 75-5-106.

Cooperation of sanitarians with reviewing authority, 76-4-106.

Cooperative agreements between sanitarians and Department of Livestock, 81-22-305.

Part 1
General

37-40-101. Definitions. Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) "Board" means the board of sanitarians provided for in 2-15-1861.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Practice the profession of sanitarian" means:

(a) giving advice on or enforcing compliance with state and local regulations applicable to local government jurisdictions and programs concerning food service, food processing, public accommodations, trailer courts, campgrounds, day-care centers, schools, swimming pools and spas, air pollution, solid and hazardous waste collection and disposal, sewage treatment and disposal, vector control, underground storage tanks, drinking water, land subdivision, and milk sanitation;

(b) cooperating with government agencies on matters of public and environmental health, including epidemiological investigations and emergency response to investigations; and

(c) providing educational and training programs in environmental standards and public health.

(4) "Registered sanitarian" means a sanitarian licensed under this chapter.

(5) "Sanitarian", within the meaning and intent of this chapter, shall mean a person who, by reason of his special knowledge of the physical, biological, and chemical sciences and the principles and methods of public health acquired by professional education and practical experience through inspectional, educational, and/or enforcement duties, is qualified to practice the profession of sanitarian.

(6) "Sanitarian-in-training" means a person who meets the minimum educational qualifications required for a sanitarian's license and who works under the supervision of a licensed sanitarian. Sanitarians-in-training may, with board approval, work in a public health agency for a period not to exceed 1 year and be considered exempt from the licensing and registration requirements of 37-40-301.

History: En. 69-3410 by Sec. 1, Ch. 314, L. 1974; R.C.M. 1947, 69-3410(1) thru (5); amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 545, L. 1991.

37-40-102. Exemptions. Persons exempt from the requirements of this chapter are:

(1) any person teaching, lecturing, or engaging in research in environmental sanitation, but only insofar as such activities are performed as part of an academic position in a college or university;

(2) any person who is a registered professional engineer or engineer-in-training;

(3) any public health officer employed pursuant to 50-2-116;

(4) any person employed by a federal governmental agency, but only at such times as the person is carrying out the functions of his employment;

(5) a state employee unless expressly required by statute, regulation, or position description to be registered as a sanitarian; or

(6) any person not employed by a governmental entity or not under contract with a governmental entity for the performance of an official regulatory function.

History: En. 69-3410 by Sec. 1, Ch. 314, L. 1974; R.C.M. 1947, 69-3410(6); amd. Sec. 2, Ch. 545, L. 1991.

Part 2

Board of Sanitarians

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1861.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-40-201. Chairman — meetings. The board shall appoint one of its members chairman. The board shall meet at least four times annually and at such other times as agreed upon.

History: En. 69-3414 by Sec. 5, Ch. 314, L. 1974; amd. Sec. 16, Ch. 453, L. 1977; R.C.M. 1947, 69-3414(2); amd. Sec. 3, Ch. 545, L. 1991.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Duty of Department to provide facilities, 37-1-101.

Disrupting meeting as disorderly conduct, 45-8-101.

37-40-202. Compensation — expenses. Members of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. 69-3414 by Sec. 5, Ch. 314, L. 1974; amd. Sec. 16, Ch. 453, L. 1977; R.C.M. 1947, 69-3414(1); amd. Sec. 27, Ch. 474, L. 1981.

37-40-203. Rulemaking power. (1) The board may adopt rules consistent with the purposes of this chapter, as it considers necessary.

(2) The board's rulemaking and hearing functions shall be in accordance with the Montana Administrative Procedure Act. The board shall adopt rules:

(a) establishing standards of professional conduct in order to maintain a high standard of integrity, dignity, and competency in the profession of sanitarian, including competency in specific fields of sanitation;

(b) governing the conduct of matters before the board;

(c) governing educational equivalency requirements, as provided in 37-40-302, for registration of sanitarians;

(d) prescribing requirements for continuing education to be met by registered sanitarians in order to maintain their professional knowledge and competence and as a condition to continuing in the practice of the profession of sanitarian; and

(e) defining qualifications for sanitarian-in-training status for issuance of the initial annual permit.

History: En. 69-3418 by Sec. 9, Ch. 314, L. 1974; R.C.M. 1947, 69-3418(1), (3); amd. Sec. 4, Ch. 545, L. 1991.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Duties of boards, 37-1-131.

Part 3
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-40-301. License required. A person may not practice or offer to practice the profession of sanitarian as defined in this chapter or hold himself out in any manner to be a licensed sanitarian unless the person is licensed and registered under the provisions of this chapter.

History: En. 69-3411 by Sec. 2, Ch. 314, L. 1974; R.C.M. 1947, 69-3411; amd. Sec. 5, Ch. 545, L. 1991.

37-40-302. Application — examination — certificate. (1) A person wishing to practice the profession of sanitarian may apply to the department for registration on a form prescribed by the board.

(2) An applicant must possess a minimum of a bachelor's degree in environmental health or its equivalent from an accredited university or college and must pass a written examination given at a time and place set by

the board. The board shall establish procedures for examination and determination of passing scores by rule.

(3) If the applicant meets the board's standards and passes the examination prescribed by the board, the department shall issue a certificate of registration upon payment of the required fee.

(4) Holders of current certificates are entitled to append to their name the initials "R.S.".

History: En. 69-3415 by Sec. 6, Ch. 314, L. 1974; R.C.M. 1947, 69-3415; amd. Sec. 4, Ch. 149, L. 1981; amd. Sec. 6, Ch. 545, L. 1991; amd. Sec. 1, Ch. 16, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 16 in (2), in first sentence after "examination", deleted "and an oral interview"; and made minor changes in style.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-40-303. Licensing sanitarians from other states. The department may issue a license without examination to a person who applies to the department, pays a fee prescribed by the board, and submits satisfactory proof to the board that the person:

(1) is of good moral character;

(2) is registered or licensed as a sanitarian in another state; and

(3) has met the same qualifications for licensure as applicants registered by examination under this chapter.

History: En. 69-3419 by Sec. 10, Ch. 314, L. 1974; R.C.M. 1947, 69-3419; amd. Sec. 5, Ch. 149, L. 1981; amd. Sec. 63, Ch. 345, L. 1981; amd. Sec. 7, Ch. 545, L. 1991.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-40-304. Fees — renewal. (1) An applicant for a license shall pay a fee set by the board in an amount commensurate with examination and administrative costs.

(2) A registered sanitarian may renew his license by paying an annual fee set by the board and submitting proof of continuing education as prescribed by the board.

(3) Renewal fees are due July 1 of the renewal year. If the renewal fee is not paid, the license expires. Licenses which have lapsed for failure to pay renewal fees may be reissued under rules adopted by the board.

History: En. 69-3416 by Sec. 7, Ch. 314, L. 1974; amd. Sec. 12, Ch. 533, L. 1977; R.C.M. 1947, 69-3416; amd. Sec. 6, Ch. 149, L. 1981; amd. Sec. 64, Ch. 345, L. 1981; amd. Sec. 8, Ch. 545, L. 1991.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-40-305. Deposit of fees. The board shall adopt a schedule of nonrefundable fees to be charged by the department and to be paid into the state special revenue fund for the use of the board. The fees charged must be reasonably related to the cost incurred in regulating the practice of the profession of sanitarian.

History: **En. 69-3417 by Sec. 8, Ch. 314, L. 1974; R.C.M. 1947, 69-3417; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 9, Ch. 545, L. 1991.**

37-40-306. Repealed. Sec. 12, Ch. 545, L. 1991.

History: **En. 69-3421 by Sec. 12, Ch. 314, L. 1974; R.C.M. 1947, 69-3421.**

37-40-307. Repealed. Sec. 12, Ch. 545, L. 1991.

History: **En. 69-3422 by Sec. 13, Ch. 314, L. 1974; R.C.M. 1947, 69-3422; amd. Sec. 17, Ch. 22, L. 1979; amd. Sec. 7, Ch. 149, L. 1981.**

37-40-308 through 37-40-310 reserved.

37-40-311. Suspension or revocation of license. (1) The board may suspend or revoke a license, put a licensee on probation, reprimand a licensee, or refuse to issue or renew a license for the following reasons:

(a) unprofessional conduct as defined by rule of the board;

(b) fraud and deceit in obtaining a license;

(c) negligence, incompetency, or misconduct in the practice as a sanitarian; or

(d) the conviction of a crime involving moral turpitude.

(2) Any person may bring charges of violating standards of conduct. The board may deny, suspend, or revoke a license or place a licensee on probation, or reprimand a licensee after a hearing held under the provisions of the Montana Administrative Procedure Act.

(3) The board may require a registrant to take a written or oral examination, or both, in a proceeding to reprimand or to revoke, suspend, or refuse to renew a license.

(4) If, after a hearing, a majority of the board votes in favor of sustaining the charges, the board shall reprimand or place the sanitarian on probation or suspend, deny, refuse to renew, or revoke the certificate of registration of the professional sanitarian.

(5) The board, for reasons it considers sufficient, may reissue a certificate of registration to a person whose certificate has been revoked if a majority of the members of the board vote in favor of the reissuance. A new certificate of registration, to replace a certificate revoked, lost, destroyed, or mutilated, may be issued by the department, subject to the rules of the board.

History: **En. 69-3418 by Sec. 9, Ch. 314, L. 1974; R.C.M. 1947, 69-3418(2); amd. Sec. 8, Ch. 149, L. 1981; amd. Sec. 10, Ch. 545, L. 1991.**

Cross-References

Oath defined, 1-1-201.

Power of notary to take acknowledgments, 1-5-416.

Oaths, Title 1, ch. 6.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Licensing to follow contested case procedure, 2-4-631.

Affidavits, Title 26, ch. 1, part 10.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of Director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Perjury, 45-7-201.

False swearing, 45-7-202.

37-40-312. Penalty. (1) A person who offers his services as a sanitarian or uses, assumes, or advertises in any way any title or description tending to convey the impression that he is a registered sanitarian who does not hold the license specified by this chapter is guilty of a misdemeanor and is punishable by a fine not to exceed $500 or imprisonment for not longer than 6 months, or both.

(2) The board may enforce the provisions of this chapter by injunction or any other appropriate proceeding.

History: En. 69-3420 by Sec. 11, Ch. 314, L. 1974; R.C.M. 1947, 69-3420; amd. Sec. 11, Ch. 545, L. 1991.

CHAPTER 41

CESSPOOL, SEPTIC TANK, AND PRIVY CLEANERS

Part 1 — General

37-41-101. License required.
37-41-102. Repealed.
37-41-103. Rulemaking power of department.
37-41-104. Definitions.
37-41-105. Exclusions.

Part 2 — Licensing

37-41-201. Application for license — form and contents.
37-41-202. Licenses — nontransferability — fees.
37-41-203. Repealed.
37-41-204. Repealed.
37-41-205. Special revenue account.
37-41-206 through 37-41-210 reserved.
37-41-211. Denial, suspension, or revocation of license.
37-41-212. Enforcement responsibility — penalty — deposit of fines.

Part 1
General

37-41-101. License required. No person may engage in the business of cleaning cesspools, septic tanks, or privies and disposal of septage therefrom unless licensed by the department.

History: En. Sec. 193, Ch. 197, L. 1967; amd. Sec. 1, Ch. 76, L. 1971; amd. Secs. 105, 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5401(part); amd. Sec. 2, Ch. 556, L. 1983.

37-41-102. Repealed. Sec. 12, Ch. 556, L. 1983.

History: En. Sec. 199, Ch. 197, L. 1967; amd. Sec. 6, Ch. 76, L. 1971; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5407; amd. Sec. 18, Ch. 22, L. 1979.

37-41-103. Rulemaking power of department. The department shall adopt necessary rules for the implementation of the provisions of this chapter, including rules pertaining to:

(1) licensure but not operation of septic tank, cesspool, and privy cleaning businesses; and

(2) requirements for temporary and permanent sites for disposal of septage.

History: En. Sec. 198, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5406; amd. Sec. 3, Ch. 556, L. 1983.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-41-104. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(3) "Disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of septage into or onto the land or water.

(4) "Person" means an individual, firm, partnership, association, corporation, city, town, local government entity, or other government or private entity, whether organized for profit or not.

(5) "Septage" means waste material from cesspools, septic tanks, or privies.

History: En. Sec. 1, Ch. 556, L. 1983.

37-41-105. Exclusions. This chapter does not prohibit the owner or lessee of the property from which the septage was removed from disposing or contracting for the disposal of his own septage upon land owned or leased by him if it does not create a nuisance or public health hazard.

History: En. Sec. 8, Ch. 556, L. 1983.

Cross-References

Nuisances, Title 27, ch. 30.

Part 2
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-41-201. Application for license — form and contents. Application for a license is made to the department on application forms provided by the department. The application shall contain:

(1) the full name and business address of each applicant;

(2) a list of the counties in which business is to be conducted; and

(3) certification by a local health officer or his designated representative in each county in which the applicant's business is to be conducted that proposed disposal sites to be used by the applicant meet all applicable state and local requirements.

History: En. Sec. 194, Ch. 197, L. 1967; amd. Sec. 2, Ch. 76, L. 1971; amd. Secs. 107, 109, Ch. 349, L. 1974; R.C.M. 1947, 69-5402; amd. Sec. 4, Ch. 556, L. 1983.

37-41-202. Licenses — nontransferability — fees. (1) Licenses expire on December 31 of each calendar year. Licenses are not transferable. If a licensee ceases to do business, the license must be surrendered to the department.

(2) The fee for each license is $25, payable at the time of application for the license. A federal agency, city, town, or other political subdivision is not required to pay the license fee, but such agency, including a federal agency if allowed by federal law, shall comply with all other requirements of this chapter. The department shall annually return 80% of the fees to the county where the fees were collected. The state portion of the fee must be deposited in the account provided for in 37-41-205. The county portion of the fee must be used to defer cost of the county to enforce this chapter.

(3) In addition to the license fee required under subsection (2), the department shall collect a late fee from any licensee who has failed to submit a license renewal fee prior to the expiration of his current license and who operates a business governed by this chapter in the licensing year. The late fee is $25 and must be deposited in the account provided for in 37-41-205.

History: En. Sec. 195, Ch. 197, L. 1967; amd. Sec. 3, Ch. 76, L. 1971; amd. Sec. 109, Ch. 349, L. 1974; R.C.M. 1947, 69-5403; amd. Sec. 5, Ch. 556, L. 1983; amd. Sec. 1, Ch. 392, L. 1991.

37-41-203. Repealed. Sec. 12, Ch. 556, L. 1983.

History: En. Sec. 196, Ch. 197, L. 1967; amd. Sec. 4, Ch. 76, L. 1971; R.C.M. 1947, 69-5404.

37-41-204. Repealed. Sec. 12, Ch. 556, L. 1983.

History: En. Sec. 197, Ch. 197, L. 1967; amd. Sec. 5, Ch. 76, L. 1971; R.C.M. 1947, 69-5405.

37-41-205. Special revenue account. There is an account in the state special revenue fund. Money in the account is allocated to the department to fund programs to enforce the provisions of this chapter and rules adopted by the department under 37-41-103.

History: En. Sec. 2, Ch. 392, L. 1991.

37-41-206 through 37-41-210 reserved.

37-41-211. Denial, suspension, or revocation of license. The department may deny, suspend, or revoke a license for noncompliance with this chapter or rules adopted by the department. Upon denial, suspension, or revocation, the applicant or licensee may request a hearing within 30 days after receipt of a written notice of the department's action. The hearing must be held before the board and in accordance with the Montana Administrative Procedure Act.

History: En. Sec. 193, Ch. 197, L. 1967; amd. Sec. 1, Ch. 76, L. 1971; amd. Secs. 105, 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5401(part); amd. Sec. 6, Ch. 556, L. 1983.

Cross-References

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-41-212. Enforcement responsibility — penalty — deposit of fines. (1) State and local health officers shall enforce this chapter.

(2) A person who violates this chapter or a rule of the department is guilty of a misdemeanor and upon conviction shall be fined not more than $500.

(3) All fines collected under this section, except those collected by a justice's court, shall be deposited in the general fund of the county in which the action is brought.

History: En. Sec. 200, Ch. 197, L. 1967; amd. Sec. 7, Ch. 76, L. 1971; R.C.M. 1947, 69-5408; amd. Sec. 7, Ch. 556, L. 1983; amd. Sec. 27, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

CHAPTER 42

WATER TREATMENT PLANT OPERATORS

Part 1 — General

37-42-101. Purpose.
37-42-102. Definitions.
37-42-103. Exemption.
37-42-104. Classification of treatment plants and distribution systems.

Part 2 — Water and Wastewater Operators' Advisory Council

37-42-201. Meetings — compensation of members — expenses.
37-42-202. Rulemaking power — examinations — continuing education requirements.
37-42-203. Duty to advise and assist department.

Part 3 — Licensing

37-42-301. Department to certify operators.
37-42-302. Unlawful to operate plant or system without certified operator — department to issue temporary certificates.
37-42-303. Operator of treatment plant or distribution system to be certified — exemption.
37-42-304. Application for operator's certificate — fee.
37-42-305. Certification without examination.
37-42-306. Issuance of operator certificate — display.
37-42-307. Retention of certificate by operators who terminate employment — notification to department.
37-42-308. Annual renewal — fees — revocation for failure to renew — reinstatement — notice of suspension.
37-42-309. Deposit of fees.
37-42-310 through 37-42-320 reserved.
37-42-321. Revocation of operator's certificate — disciplinary action by department.
37-42-322. Violation.

Chapter Cross-References

Metropolitan sanitary and/or storm sewer districts, Title 7, ch. 13, part 1.

Municipal sewage and/or water systems, Title 7, ch. 13, part 43.

Water quality, Title 75, ch. 5.

Public water supplies, distribution, and treatment, Title 75, ch. 6.

Aquatic ecosystem protections, Title 75, ch. 7.

Sanitation in subdivisions, Title 76, ch. 4, part 1.

Part 1
General

37-42-101. Purpose. It is hereby found and declared that the health and welfare of Montana citizens are jeopardized by persons not properly qualified to operate the water supply systems and that Montana's waters are endangered by persons not properly qualified to operate the wastewater treatment plants. It is declared the public policy of this state to control by certifying those persons working in these occupations in order to protect the public health and safety.

History: En. Sec. 1, Ch. 239, L. 1967; R.C.M. 1947, 69-5901.

37-42-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Certificate" means a certificate of competency issued by the department, stating that the operator holding the certificate has met the requirements for the specified operator classification of the certification program.

(2) "Council" means the water and wastewater operators' advisory council provided for in 2-15-2105.

(3) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part.21.

(4) "Montana's waters" means all streams and lakes (including all rivers and lakes bordering on the state), wells, springs, irrigation systems, marshes, watercourses, waterways, drainage systems, and other bodies of water, surface and underground, natural or artificial, publicly or privately owned.

(5) "Operator" means the person in direct responsible charge of the operation of a water treatment plant, water distribution system, or wastewater treatment plant.

(6) "Wastewater treatment plant" means a facility designed to remove solids, bacteria, or other harmful constituents of sewage, industrial wastes, or other wastes and which discharges an effluent directly into this state's waters and which serves 10 or more families or serves an industry employing 10 or more persons.

(7) "Water distribution system" means that portion of the water supply system in which water is conveyed from the water treatment plant or other supply source to the premises of the consumer and which serves 10 or more families or supplies an industry employing 10 or more persons.

(8) "Water supply system" means the system of pipes, structures, and facilities through which the water is obtained, treated, sold, distributed, or otherwise offered to the public for household use or use by humans and which serves 10 or more families or serves an industry employing 10 or more persons.

(9) "Water treatment plant" means that portion of the water supply system which alters either the physical, chemical, or bacteriological quality of the water rendering it safe and palatable for human use.

History: En. Sec. 2, Ch. 239, L. 1967; amd. Sec. 85, Ch. 349, L. 1974; R.C.M. 1947, 69-5902(part); amd. Sec. 4, Ch. 243, L. 1983.

37-42-103. Exemption. Operators of plants or systems serving less than 10 families are exempt from this chapter.

History: En. Sec. 2, Ch. 239, L. 1967; amd. Sec. 85, Ch. 349, L. 1974; R.C.M. 1947, 69-5902(part).

37-42-104. Classification of treatment plants and distribution systems. The department shall classify all water treatment plants, water distribution systems, and wastewater treatment plants with due regard to the size, type, physical conditions affecting such water treatment plants and distribution systems, character of wastewaters to be treated and other physical conditions affecting such waste treatment plants, and according to the skill, knowledge, and experience that the operator in responsible charge must have to successfully supervise the operation of such water treatment plants and water distribution systems and such wastewater treatment facilities so as to protect the public health and prevent unlawful pollution.

History: En. Sec. 4, Ch. 239, L. 1967; amd. Sec. 111, Ch. 349, L. 1974; R.C.M. 1947, 69-5904.

Part 2

Water and Wastewater Operators' Advisory Council

37-42-201. Meetings — compensation of members — expenses. (1) Annually, when new members are appointed to the council, a chairman shall be elected at the next council meeting.

(2) Meetings may be called by the chairman or on written request of four members of the council when necessary to carry out its function to advise the department under this chapter. Four members constitute a quorum.

(3) Members of the council are entitled to be reimbursed and compensated as are members of advisory councils in 2-15-122(5).

History: En. Sec. 3, Ch. 239, L. 1967; amd. Sec. 1, Ch. 306, L. 1971; amd. Sec. 86, Ch. 349, L. 1974; amd. Sec. 46, Ch. 439, L. 1975; R.C.M. 1947, 69-5903(2), (3); amd. Sec. 5, Ch. 243, L. 1983.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Disrupting meeting as disorderly conduct, 45-8-101.

37-42-202. Rulemaking power — examinations — continuing education requirements. (1) The department shall adopt rules necessary to carry out this chapter. The rules shall include but are not limited to provisions establishing the basis for classification of treatment plants under 37-42-104, provisions establishing qualifications of applicants, procedures for examination of candidates, and other provisions necessary for the administration of this chapter.

(2) The department shall hold at least one examination each year, at a time and place designated by the department, for the purpose of examining candidates for certification.

(3) The department may establish reasonable continuing education requirements for certified water and wastewater operators.

History: En. Sec. 10, Ch. 239, L. 1967; amd. Sec. 3, Ch. 306, L. 1971; amd. Sec. 91, Ch. 349, L. 1974; R.C.M. 1947, 69-5910; amd. Sec. 6, Ch. 243, L. 1983.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-42-203. Duty to advise and assist department. The council shall advise and assist the department in the administration of the certification program. The council shall serve as an advisory board to the department in actions relating to the qualifications of water and wastewater treatment plant operators.

History: En. Sec. 3, Ch. 239, L. 1967; amd. Sec. 1, Ch. 306, L. 1971; amd. Sec. 86, Ch. 349, L. 1974; amd. Sec. 46, Ch. 439, L. 1975; R.C.M. 1947, 69-5903(1); amd. Sec. 7, Ch. 243, L. 1983.

Cross-References

Public water supplies — actions to enforce compliance, 75-6-111.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-42-301. Department to certify operators. (1) The department shall certify persons as to their qualifications to supervise successfully the operation of such water and wastewater treatment plants and water distribution systems.

(2) In granting the certificates, the department shall give due regard to the interest of this state in protecting the drinking water supplies and the quality of its water.

History: (1)En. Sec. 5, Ch. 239, L. 1967; amd. Sec. 111, Ch. 349, L. 1974; Sec. 69-5905, R.C.M. 1947; (2)En. Sec. 8, Ch. 239, L. 1967; amd. Sec. 2, Ch. 306, L. 1971; amd. Sec. 89, Ch. 349, L. 1974; Sec. 69-5908, R.C.M. 1947; R.C.M. 1947, 69-5905, 69-5908(part); amd. Sec. 8, Ch. 243, L. 1983.

37-42-302. Unlawful to operate plant or system without certified operator — department to issue temporary certificates. (1) It is unlawful for a person, firm, or corporation, both municipal and private, operating a wastewater treatment plant, water treatment plant, or water distribution system to operate it unless the competency of the operator is certified to by the department under this chapter.

(2) Furthermore, it is unlawful for a person to perform the duties of an operator without being certified under this chapter.

(3) For good cause shown, the department may issue temporary certificates that are valid for up to 1 year.

History: En. Sec. 11, Ch. 239, L. 1967; amd. Sec. 92, Ch. 349, L. 1974; R.C.M. 1947, 69-5911; amd. Sec. 9, Ch. 243, L. 1983.

37-42-303. Operator of treatment plant or distribution system to be certified — exemption. (1) Water and wastewater treatment plants and water distribution systems, whether publicly or privately owned, must be under the supervision of an operator whose competency is certified to by the department in a grade corresponding to the classification of that portion of the water or wastewater supply system to be supervised.

(2) However, this chapter does not prevent a governmental agency, corporation, or individual from continuing to employ in this capacity a person in responsible charge of the operation of such works on July 1, 1967. Certificates of proper classification may be issued without examination to the person or

persons certified by the governing board or owner to have been in responsible charge of the water and wastewater plants and water distribution systems on July 1, 1967. A certificate so issued will be valid only in that plant.

History: En. Sec. 6, Ch. 239, L. 1967; amd. Sec. 87, Ch. 349, L. 1974; R.C.M. 1947, 69-5906(part).

37-42-304. Application for operator's certificate — fee. A person desiring to engage in the operation of a water treatment plant, water distribution system, or wastewater treatment plant shall first file an application with the department for a proper certificate. The department shall charge a fee of the same amount as the license cost as established pursuant to 37-1-134 and shall not act on an application until the fee has been paid.

History: En. Sec. 8, Ch. 239, L. 1967; amd. Sec. 2, Ch. 306, L. 1971; amd. Sec. 89, Ch. 349, L. 1974; R.C.M. 1947, 69-5908(part); amd. Sec. 10, Ch. 243, L. 1983.

37-42-305. Certification without examination. The department may consider for certification the holder of a certificate issued by a governmental agency or equivalent certification board of another state on presentation to the department of satisfactory evidence that the applicant is in responsible charge of works located in this state requiring a certified operator and that he has successfully passed an examination at least equivalent to that required under 37-42-202(2).

History: En. Sec. 6, Ch. 239, L. 1967; amd. Sec. 87, Ch. 349, L. 1974; R.C.M. 1947, 69-5906(part); amd. Sec. 11, Ch. 243, L. 1983; amd. Sec. 92, Ch. 370, L. 1987.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-42-306. Issuance of operator certificate — display. (1) The department shall issue certificates attesting to the competency of operators. The certificates shall include the classification of the works which the operator is qualified to supervise.

(2) The certificate shall be prominently displayed in the office of the operator.

(3) Certificates continue in effect unless revoked by the department but remain the property of the department, and the certificate shall so state. A certificate shall be renewed annually by payment of the proper fee.

History: En. Sec. 7, Ch. 239, L. 1967; amd. Sec. 88, Ch. 349, L. 1974; R.C.M. 1947, 69-5907(part).

37-42-307. Retention of certificate by operators who terminate employment — notification to department. (1) Operators who terminate employment may retain their certificate for 2 years, provided that all other requirements are met. After 2 years, a certificate is automatically invalidated. Operators whose certificates are invalidated under this chapter may be issued new certificates of like classification, provided appropriate proof of competency is presented to the department. Successful completion of an examination may be required at the discretion of the department.

(2) Any person, firm, or corporation, both municipal and private, shall notify the department within 3 business days after termination if a certified water or wastewater operator terminates employment.

History: En. Sec. 7, Ch. 239, L. 1967; amd. Sec. 88, Ch. 349, L. 1974; R.C.M. 1947, 69-5907(3); amd. Sec. 12, Ch. 243, L. 1983.

37-42-308. Annual renewal — fees — revocation for failure to renew — reinstatement — notice of suspension. (1) Certificates issued under this chapter shall be renewed annually before July 1. A certificate issued after July 1 expires the following June 30. After the payment of the initial fee under 37-42-304, a certificate holder shall pay before July 1 of each certificate year a renewal fee according to the schedule adopted by the department pursuant to 37-1-134.

(2) If a certificate holder does not apply for a renewal of his certificate before July 1 and remit to the department the necessary renewal fee, he shall have his certificate suspended by the department. If the certificate remains suspended for a period of more than 30 days, it shall be revoked by the department. However, the department, before this revocation, shall notify the certificate holder by certified mail at the address on the issued certificate of its intention to revoke, at least 10 days before the time set for action to be taken by the department on the certificate.

(3) A certificate once revoked may not be reinstated unless it appears that an injustice has occurred through error or omission or other fact or circumstances indicating to the department that the certificate holder was not guilty of negligence or laches.

(4) Notice of suspension shall be given to the certificate holder when the suspension occurs and to the proper official or owner of the treatment works or distribution system.

(5) If a person whose certificate has been revoked through his own fault desires to continue as a water or wastewater plant operator, he must make application to the department under 37-42-304. Successful completion of an examination may be required at the discretion of the department.

History: En. Sec. 9, Ch. 239, L. 1967; amd. Sec. 90, Ch. 349, L. 1974; R.C.M. 1947, 69-5909; amd. Sec. 13, Ch. 243, L. 1983.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

37-42-309. Deposit of fees. Filing and certification fees shall be deposited with the state treasurer in the department state special revenue fund and shall be used to pay the expenses of the council and department under this chapter. Moneys may be invested in accordance with procedures of investment of state moneys.

History: En. Sec. 8, Ch. 239, L. 1967; amd. Sec. 2, Ch. 306, L. 1971; amd. Sec. 89, Ch. 349, L. 1974; R.C.M. 1947, 69-5908(part); amd. Sec. 14, Ch. 243, L. 1983; amd. Sec. 1, Ch. 277, L. 1983.

37-42-310 through 37-42-320 reserved.

37-42-321. Revocation of operator's certificate — disciplinary action by department. (1) The department may revoke the certificate of an operator, following a hearing by the department, when it is found that:

(a) the operator has practiced fraud or deception;

(b) reasonable care, judgment, or the application of his knowledge or ability was not used in the performance of his duties; or

(c) the operator is incompetent or unable to properly perform his duties.

(2) The department may take any disciplinary action pursuant to 37-1-136.

History: **En. Sec. 7, Ch. 239, L. 1967; amd. Sec. 88, Ch. 349, L. 1974; R.C.M. 1947, 69-5907(2); amd. Sec. 15, Ch. 243, L. 1983.**

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-42-322. Violation. Any person, firm, or corporation, both municipal and private, violating any provisions of this chapter or the rules adopted hereunder is guilty of a misdemeanor. Each day of operation in violation of this chapter or any rules adopted hereunder shall constitute a separate offense.

History: **En. Sec. 12, Ch. 239, L. 1967; R.C.M. 1947, 69-5912.**

Cross-References

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Penalty when none specified, 46-18-212.

CHAPTER 43

WATER WELL CONTRACTORS

Part 1 — General

37-43-101. Purpose.
37-43-102. Definitions.
37-43-103. Repealed.
37-43-104. Licensed monitoring well constructor to supervise all construction of monitoring wells.

Part 2 — Board of Water Well Contractors

37-43-201. Organization — seal — compensation of members.
37-43-202. Powers and duties.
37-43-203. Renumbered 37-43-314 by Code Commissioner, 1993.
37-43-204. Earmarked money for board expenses — expenditure of funds from bonds.

Part 3 — Licensing

37-43-301. Licensed person to supervise all construction.
37-43-302. License required.
37-43-303. Application — fee.
37-43-304. Repealed.
37-43-305. Examination and qualifications.
37-43-306. Bond to be required.
37-43-307. Annual renewal — fee — revocation for nonrenewal.
37-43-308. Reciprocity.
37-43-309. Complaints and investigations.
37-43-310. Disciplinary procedure.
37-43-311. Repealed.
37-43-312. Penalty.
37-43-313. Disciplinary authority.
37-43-314. Injunctions.

Part 4 — Miscellaneous Provisions

37-43-401. No action or counterclaim to be maintained except by licensee.
37-43-402. Completion of contracts by successor in interest of licensee.

Chapter Cross-References
Ground water, Title 85, ch. 2, part 5.

Part 1
General

37-43-101. Purpose. It is the purpose of this chapter to reduce and minimize the waste and contamination of ground water resources within this state by reasonable regulation and licensing of drillers or makers of water wells and monitoring wells and to protect the health and general welfare by providing a means for the development of the natural resource of underground water in an orderly, sanitary, and reasonable manner. The reasonable regulation and licensing of drillers or makers of water wells and monitoring wells is in the best interest of the public, and the waste and contamination of ground water resources through inefficient or incompetent operations of drillers or makers of water wells and monitoring wells is prohibited. For the protection of the public and for the conservation of underground water resources, it is necessary that standards be set and maintained to insure that competency in the drilling and making of water wells and monitoring wells in this state is obtained.

History: En. Sec. 2, Ch. 176, L. 1961; amd. Sec. 2, Ch. 234, L. 1963; amd. Sec. 2, Ch. 232, L. 1974; amd. Sec. 250, Ch. 350, L. 1974; R.C.M. 1947, 66-2602; amd. Sec. 1, Ch. 538, L. 1987.

37-43-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Apprentice water well driller" means an individual who is learning the trade of water well drilling and performs labor and services for a licensed water well contractor and whose duties are directly related to well drilling or drilling rig operation.

(2) "Board" means the board of water well contractors provided for in 2-15-3307.

(3) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(4) "Geotechnical boring" means a hole intended solely to determine the composition, stability, density, movement, pressure, stratigraphy, or other physical properties of soil or rock.

(5) "Monitoring well" means a well that is used for pollutant recovery or monitoring ground water quality, ground water levels, or flow direction, but whose primary purpose is not the withdrawal or acquisition of ground water. Monitoring well does not include geotechnical borings, perk test holes, and ground water exploration holes that are used to determine suitability of onsite sewage disposal by septic tank drain fields or lagoons.

(6) "Monitoring well constructor" means a natural person who installs monitoring wells.

(7) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water. The term does not include spring development or excavations, by backhoe or otherwise, for

recovery and use of surface waters or for the purpose of stock watering or irrigation where the depth is 25 feet or less. The term does not include an excavation made for the purpose of obtaining or prospecting for oil, natural gas, minerals, or products of mining or quarrying or for inserting media to repressure oil- or natural-gas-bearing formations or for storing petroleum, natural gas, or other products.

(8) "Water well contractor" or "contractor" means a natural person who contracts on behalf of a firm, corporation, partnership, or other business entity to construct, alter, or rehabilitate a water well on lands other than his own for compensation.

(9) "Water well driller" or "driller" means any person, other than an apprentice, at a drilling site causing a water well to be drilled, altered, or rehabilitated.

History: En. 66-2602.1 by Sec. 251, Ch. 350, L. 1974; amd. Sec. 2, Ch. 232, L. 1974; amd. Sec. 1, Ch. 268, L. 1975; R.C.M. 1947, 66-2602.1(part); amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 728, L. 1985; amd. Sec. 2, Ch. 538, L. 1987; amd. Sec. 1, Ch. 516, L. 1989.

37-43-103. Repealed. Sec. 10, Ch. 728, L. 1985.

History: En. 66-2602.2 by Sec. 252, Ch. 350, L. 1974; amd. Sec. 2, Ch. 232, L. 1974; R.C.M. 1947, 66-2602.2.

37-43-104. Licensed monitoring well constructor to supervise all construction of monitoring wells. (1) Any firm, corporation, or partnership may engage in the business of constructing or installing monitoring wells provided a licensed monitoring well constructor is in charge of all monitoring well installation.

(2) The licensed monitoring well constructor must be physically present at the site throughout the construction of the monitoring well.

History: En. Sec. 17, Ch. 538, L. 1987.

Part 2

Board of Water Well Contractors

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-3307.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-43-201. Organization — seal — compensation of members. (1) The board shall annually elect a chairman and vice-chairman.

(2) The board shall have a seal with the words engraved thereon, "Board of Water Well Contractors", and such seal shall be affixed to all writs, authentication of records, and other official proceedings of the board. The courts of this state shall take judicial notice of such seal.

(3) Each appointed member of the board who is not a government employee shall receive as compensation for his services the sum of $50 per day for each day actually engaged in the performance of the duties of his office, including time of travel between his home and the places at which he shall perform such duties, together with mileage and per diem expenses as provided for in 2-18-501 through 2-18-503. The members who are employees of the state of Montana shall receive no extra compensation for their services as members of the board.

History: Ap. p. 82A-1602.26 by Sec. 3, Ch. 232, L. 1974; Sec. 361, Ch. 350, L. 1974; Sec. 82A-1602.26, R.C.M. 1947; Ap. p. Sec. 4, Ch. 176, L. 1961; amd. Sec. 152, Ch. 147, L. 1963; amd. Sec. 1, Ch. 278, L. 1969; amd. Sec. 25, Ch. 100, L. 1973; amd. Sec. 253, Ch. 350, L. 1974; amd. Sec. 41, Ch. 439, L. 1975; Sec. 66-2604, R.C.M. 1947; R.C.M. 1947, 66-2604, 82A-1602.26(4), (5); amd. Sec. 4, Ch. 83, L. 1981; amd. Sec. 3, Ch. 538, L. 1987.

Cross-References

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

37-43-202. Powers and duties. (1) The board may exercise the authority granted to it by this chapter.

(2) The board shall adopt rules and orders to effectuate this chapter.

(3) The board shall adopt rules to establish mandatory water well construction standards and enforcement procedures. The standards must address the protection of the drilling site; specifications for casing materials; materials and specifications for well screens; casing perforations; well development procedures; proper sealing and grouting; temporary capping; cleaning and disinfecting; bonds; guaranties; contractors' and drillers' qualifications; tests for yield and drawdown; reporting procedures and requirements for water quality, well logs, location of wells, and information relating to local conditions; well filters; access ports; gravel packing; sampling methods; plumbness and alignment of the hole and casing; well abandonment procedures; and other necessary and appropriate standards.

(4) The board shall adopt minimum standards regarding the construction, use, and abandonment of monitoring wells. The standards must be designed to protect the state's ground water resource from degradation by contamination and loss of hydrostatic pressure. A violation of the standards does not occur if it can be shown that noncompliance results in equal or greater protection of the ground water resource.

(5) The board may request the department to inspect water wells or monitoring wells drilled or being drilled, and the department has access to these wells at reasonable times.

(6) The board may establish a program for training apprentices and licensed or prospective water well contractors, water well drillers, and monitoring well constructors to more effectively carry out this chapter.

(7) The board shall set and enforce standards and rules governing the licensing, registration, and conduct of water well drillers, water well contractors, and monitoring well constructors.

(8) The board shall set fees commensurate with costs. The board may establish fees, including but not limited to fees for application, examination, renewal, reciprocity, late renewal, and continuing education. Board costs not related to specific programs may be equitably distributed as determined by the board. The board shall maintain records sufficient to support the fees charged for each program area.

(9) The rules of the board must be compiled in printed form for distribution to interested persons, for which the department may charge a fee. Sums realized from these sales must be deposited in the state special revenue fund for the use of the board.

(10) The board shall:

(a) authorize the department to issue licenses to qualified water well contractors, water well drillers, and monitoring well constructors in this state;

(b) cause examinations to be made of applicants for licenses;

(c) take disciplinary action and issue orders pursuant to this chapter; and

(d) generally perform duties that will carry out this chapter.

(11) The board shall pay to the department its share of the assessed costs of the department in administering this chapter.

History: En. Sec. 5, Ch. 176, L. 1961; amd. Sec. 153, Ch. 147, L. 1963; amd. Sec. 3, Ch. 234, L. 1963; amd. Sec. 254, Ch. 350, L. 1974; R.C.M. 1947, 66-2605; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 728, L. 1985; amd. Sec. 4, Ch. 538, L. 1987; amd. Sec. 3, Ch. 516, L. 1989; amd. Sec. 1, Ch. 284, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 284 substituted (10)(c) authorizing disciplinary action and orders for "deny, revoke, or suspend licenses for good cause, after notice and opportunity to be heard"; deleted former (10)(d) that read: "(d) reinstate licenses previously revoked when justification is shown to the satisfaction of the board"; and made minor changes in style. Amendment effective April 7, 1993.

Effective Date — Applicability: Section 9, Ch. 284, L. 1993, provided: "[This act] is effective on passage and approval and applies to all disciplinary actions initiated by the board of water well contractors after [the effective date of this act]." Effective April 7, 1993.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation for administrative purposes only, 2-15-121.

Quasi-judicial boards, 2-15-124.

Duties of boards, 37-1-131.

37-43-203. Renumbered 37-43-314 by Code Commissioner, 1993.

37-43-204. Earmarked money for board expenses — expenditure of funds from bonds. (1) All money collected under this chapter must be deposited in the state special revenue fund and may be used only for the purpose of paying expenses of the board. Except for funds received from bonds in subsection (2), the money must be appropriated by the legislature before it may be expended by the board. Income and interest from investment of the money in the state special revenue fund that are collected under this chapter must be credited to the board.

(2) The board may accept and expend all funds received from bonds required by 37-43-306. The funds must be used to remedy defects in water wells, to compensate for damages caused by violations of this chapter or the rules of the board, or to pay any administrative costs incurred by the board under 37-43-309, 37-43-310, and 37-43-313. These funds are statutorily appropriated as provided in 17-7-502.

History: En. Sec. 1, Ch. 493, L. 1991; amd. Sec. 6, Ch. 284, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 284 at end of second sentence of (2) substituted "37-43-309, 37-43-310, and 37-43-313" for "37-43-311". Amendment effective April 7, 1993.

Effective Date — Applicability: Section 9, Ch. 284, L. 1993, provided: "[This act] is effective on passage and approval and applies to all disciplinary actions initiated by the board of water well contractors after [the effective date of this act]." Effective April 7, 1993.

Part 3
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-43-301. Licensed person to supervise all construction. (1) Any firm, corporation, or partnership may engage in the business of constructing water wells provided a licensed water well contractor is placed in charge of all water well construction.

(2) The licensed water well contractor must be the individual who contracts on behalf of the firm, corporation, or partnership.

(3) A licensed water well driller, pursuant to 37-43-305, must be employed by a licensed water well contractor.

History: En. 66-2602.1 by Sec. 251, Ch. 350, L. 1974; amd. Sec. 2, Ch. 232, L. 1974; amd. Sec. 1, Ch. 268, L. 1975; R.C.M. 1947, 66-2602.1(part); amd. Sec. 6, Ch. 538, L. 1987.

37-43-302. License required. (1) The drilling, making, or construction of water wells and monitoring wells is declared to be a business and activity affecting the public interest, requiring reasonable standards of competence. Except as provided in subsection (2), it is unlawful for any water well contractor, water well driller, or monitoring well constructor as defined in this chapter, to construct, alter, or rehabilitate a water well or a monitoring well without first having obtained a valid license therefor as provided for in this chapter. An individual who is licensed as a water well contractor is not required to have a separate water well driller's license to perform the actual construction work on the well or a separate license to install monitoring wells.

(2) A license is not required for:

(a) a person who drills, alters, or rehabilitates a water or monitoring well on land that is owned or leased by him, provided:

(i) the land is used by him for farming, ranching, or agricultural purposes or as his residence;

(ii) the person obtains a permit from the board; and

(iii) the construction of the well conforms to the minimum construction standards for water or monitoring wells set by board rule; or

(b) an apprentice water well driller who performs labor or services for a licensed water well contractor or driller in connection with the drilling of a water well at the direction and under the personal supervision of a licensed water well contractor or driller.

(3) (a) To obtain a permit under subsection (2)(a), a person shall file with the department an application containing the applicant's name, mailing address, the location of the proposed well, the nature of the applicant's ownership interest in the property on which the well is to be located, the construction or installation method to be used, and the use for the proposed well.

(b) The board shall promptly issue a permit if it finds that:

(i) the well is located on land that the applicant owns or leases and that he uses for farming, ranching, or agricultural purposes or as his residence; and

(ii) the construction or installation method to be used meets the minimum standards for water wells or monitoring wells set by board rule.

History: En. Sec. 3, Ch. 176, L. 1961; R.C.M. 1947, 66-2603; amd. Sec. 19, Ch. 22, L. 1979; amd. Sec. 4, Ch. 728, L. 1985; amd. Sec. 7, Ch. 538, L. 1987; amd. Sec. 4, Ch. 516, L. 1989.

Cross-References

Application for permit, 85-2-302.

Exceptions to permit requirements — ground water, 85-2-306.

Controlled ground water areas — permits, 85-2-508.

37-43-303. Application — fee. (1) Except as provided in 37-43-302(2), a person desiring to engage in the drilling, making, construction, alteration, or rehabilitation of one or more water or monitoring wells for underground water in this state shall first file an application with the department for a license. The application must set forth the applicant's qualifications, the equipment proposed to be used in the contracting, and other matters required by the board on forms adopted by the board.

(2) The department shall charge a fee prescribed by the board for filing an application. The application shall not be acted on until the fee has been paid. Fees collected under this section shall be deposited in the state special revenue fund for the use of the board.

(3) An appropriate license shall be issued to an applicant if, in the opinion of the board, the applicant is qualified to conduct water well or monitoring well construction operations. In the granting of licenses, the board shall have due regard for the interest of this state in the protection of its underground waters.

History: En. Sec. 6, Ch. 176, L. 1961; amd. Sec. 154, Ch. 147, L. 1963; amd. Sec. 4, Ch. 234, L. 1963; amd. Sec. 255, Ch. 350, L. 1974; R.C.M. 1947, 66-2606(1); amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 3, Ch. 642, L. 1983; amd. Sec. 5, Ch. 728, L. 1985; amd. Sec. 8, Ch. 538, L. 1987; amd. Sec. 9, Ch. 769, L. 1991.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

37-43-304. Repealed. Sec. 18, Ch. 538, L. 1987.

History: En. Sec. 6, Ch. 176, L. 1961; amd. Sec. 154, Ch. 147, L. 1963; amd. Sec. 4, Ch. 234, L. 1963; amd. Sec. 255, Ch. 350, L. 1974; R.C.M. 1947, 66-2606(2); amd. Sec. 6, Ch. 728, L. 1985.

37-43-305. Examination and qualifications. (1) Under board rules pertaining to the business of drilling and contracting for drilling of water wells and monitoring wells, the department shall inquire by examination or otherwise into the qualifications of applicants for licenses. Examinations may be oral, written, or both.

(2) The qualifications for a water well contractor's license are:

(a) familiar knowledge of ground water laws of this state and sanitary standards for water well drilling and construction of water wells;

(b) knowledge of types of water well construction;

(c) knowledge of types of drilling tools and their uses;

(d) knowledge of geology in its relation to well construction;

(e) possession of adequate equipment by the applicant to complete satisfactory water wells under the standards of the board;

(f) financial responsibility of the applicant;

(g) successful completion of an examination given by the department; and

(h) completion of an apprenticeship of 1 year or more under the direct supervision of a licensed water well contractor or equivalent education, experience, or both, as determined by the board.

(3) The qualifications for a water well driller's license are:

(a) familiar knowledge of ground water laws of this state and sanitary standards for water well drilling and water well construction;

(b) knowledge of types of water well construction;

(c) knowledge of types of drilling tools and their uses;

(d) knowledge of geology in its relation to well construction;

(e) employment by a licensed water well contractor;

(f) completion of an apprenticeship of 1 year or more under the direct supervision of a licensed water well contractor or driller or equivalent education, experience or both, as determined by the board; and

(g) successful completion of an examination given by the department.

(4) The qualifications for a license to construct monitoring wells are:

(a) familiar knowledge of ground water laws of this state and sanitary standards for drilling and construction of monitoring wells;

(b) knowledge of types of monitoring well construction;

(c) knowledge of types of drilling tools used for monitoring wells and their uses;

(d) knowledge of geology;

(e) financial responsibility of the applicant;

(f) 1 or more years of experience in drilling monitoring wells under the direct supervision of a licensed monitoring well constructor or equivalent education, experience, or both, as determined by the board; and

(g) successful completion of an examination related specifically to drilling of monitoring wells given by the department.

(5) The department shall give examinations at times and places the board determines. Failure of an applicant to successfully complete the examination disqualifies him from making further application for a period of 3 months. The board shall act within a reasonable time on applications for licenses. An application shall be accompanied by the initial fee, and failure to successfully meet the requirements of the board does not entitle the applicant to a refund of the fee.

History: En. Sec. 8, Ch. 176, L. 1961; amd. Sec. 4, Ch. 232, L. 1974; amd. Sec. 257, Ch. 350, L. 1974; R.C.M. 1947, 66-2608; amd. Sec. 4, Ch. 642, L. 1983; amd. Sec. 7, Ch. 728, L. 1985; amd. Sec. 9, Ch. 538, L. 1987; amd. Sec. 5, Ch. 516, L. 1989.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-43-306. Bond to be required. (1) The department, on issuance of a water well contractor's or monitoring well constructor's license under this chapter, shall require, before the person commences operations in this state, a good and sufficient surety bond or its equivalent in a certificate of deposit, cashier's check, bank draft, or certified check, to be approved by the board, in the sum of $4,000, conditioned that the licensee will comply with the rules of the board.

(2) A person who is licensed in more than one category need supply only one surety bond or its equivalent in a certificate of deposit, cashier's check, bank draft, or certified check, to be approved by the board, for $4,000.

(3) A state or federal employee who is bonded by the state or federal government is not required to supply a bond during the course of his employ-

ment with the state or federal government. A bond is required if the person ceases government employment.

(4) In lieu of the requirements of subsections (1) through (3), a firm, corporation, or partnership having more than two licensed water well contractors or monitoring well constructors may submit one bond in the amount of $10,000 for the entire firm, corporation, or partnership."

History: En. Sec. 9, Ch. 176, L. 1961; amd. Sec. 5, Ch. 232, L. 1974; amd. Sec. 258, Ch. 350, L. 1974; amd. Sec. 2, Ch. 268, L. 1975; R.C.M. 1947, 66-2609; amd. Sec. 5, Ch. 642, L. 1983; amd. Sec. 8, Ch. 728, L. 1985; amd. Sec. 10, Ch. 538, L. 1987; amd. Sec. 6, Ch. 516, L. 1989.

37-43-307. Annual renewal — fee — revocation for nonrenewal. (1) The term for licenses issued under this chapter is from July 1 of each year through the following June 30. After the payment of the initial fee under 37-43-303, a licensee shall pay, before the first day of each license year, a renewal fee as prescribed by the board.

(2) If a licensee does not apply for renewal of his license before the first day of a license year and remit to the department the renewal fee, he shall have his license suspended by the board. If the license remains suspended for a period of more than 30 days after the first day of a license year, it shall be revoked by the board. However, the department, prior to this revocation, shall notify the licensee of the board's intention to revoke at least 10 days prior to the time set for action to be taken by the board on the license, by mailing notice to the licensee at the address appearing for the licensee in the records and files of the department. A license once revoked may not be reinstated unless it appears that an injustice has occurred indicating to the board that the licensee was not guilty of negligence or laches. If a person whose license has been revoked through his own fault desires to engage in the business of water well drilling or monitoring well construction in this state or contracting therefor, he must apply under 37-43-303. Notice of suspension shall be given a licensee when the suspension occurs.

History: En. Sec. 7, Ch. 176, L. 1961; amd. Sec. 256, Ch. 350, L. 1974; R.C.M. 1947, 66-2607; amd. Sec. 6, Ch. 642, L. 1983; amd. Sec. 11, Ch. 538, L. 1987; amd. Sec. 10, Ch. 769, L. 1991.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-43-308. Reciprocity. If a person holding a license entitling him to drill water wells or monitoring wells in another state applies for a Montana water well contractor's, water well driller's, or monitoring well constructor's license, the board may waive the apprenticeship requirements and examination requirements if it finds that the standards and requirements of the state in which the applicant is licensed are equal to or exceed those of Montana. However, the board may require the applicant to successfully complete an examination based on Montana statutes and rules relating to the drilling of water wells or monitoring wells in this state.

History: En. Sec. 8, Ch. 642, L. 1983; amd. Sec. 12, Ch. 538, L. 1987; amd. Sec. 7, Ch. 516, L. 1989.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-43-309. Complaints and investigations. The board may investigate complaints against licensees to determine compliance with the laws and rules of this chapter. Licensees must be given an opportunity to respond to complaints and demonstrate or achieve legal compliance prior to disciplinary action. The board may require complainants and licensees to appear before the board to discuss complaints and to attempt to settle differences.

History: En. Sec. 3, Ch. 284, L. 1993.

Compiler's Comments

Effective Date — Applicability: Section 9, Ch. 284, L. 1993, provided: "[This act] is effective on passage and approval and applies to all disciplinary actions initiated by the board of water well contractors after [the effective date of this act]." Effective April 7, 1993.

37-43-310. Disciplinary procedure. (1) If, after investigation and attempted settlement under 37-43-309, compliance with lawful requirements is not demonstrated or achieved, the board may initiate discipline by issuing a proposed disciplinary order. The proposed order must state the factual and legal basis for the order and identify the witnesses, documents, logs, and reports relied upon by the board in reaching a decision. Copies of any documents, logs, or reports must be attached to the proposed order.

(2) The board shall mail or deliver a copy of the proposed order to the licensee, along with notice that the licensee may request a hearing to show cause why the order should be rejected or modified. If a hearing is not requested within 20 days, the board shall adopt the proposed order as a final order.

(3) A request for hearing must be in writing and specify which, if any, board witnesses the licensee wishes to cross-examine. If a timely request for hearing is received, the board shall schedule a hearing before the board or assign a hearings examiner to conduct the hearing at a later date to be set by the hearings examiner. The board shall make the specified witnesses available for cross-examination at the hearing.

(4) The licensee has the burden to show cause why the proposed order should be rejected or modified. The licensee may cross-examine the board's witnesses, present evidence, propose alternative discipline, argue issues of law and fact, or otherwise attempt to convince the board that the proposed order should be rejected or modified.

(5) After considering the evidence, proposals, and arguments presented at the hearing, the board shall issue its final order adopting, rejecting, or modifying the proposed order. The final order must state the reason for the adoption, rejection, or modification of the proposed order.

(6) A final disciplinary order may be appealed to the district court in the first judicial district and is reviewable according to the rules and standards for judicial review of contested cases pursuant to the Montana Administrative Procedure Act.

History: En. Sec. 4, Ch. 284, L. 1993.

Compiler's Comments

Effective Date — Applicability: Section 9, Ch. 284, L. 1993, provided: "[This act] is effective on passage and approval and applies to all disciplinary actions initiated by the board of water well contractors after [the effective date of this act]." Effective April 7, 1993.

37-43-311. Repealed. Sec. 7, Ch. 284, L. 1993.

History: En. Sec. 10, Ch. 176, L. 1961; amd. Sec. 259, Ch. 350, L. 1974; R.C.M. 1947, 66-2610; amd. Sec. 7, Ch. 642, L. 1983.

37-43-312. Penalty. Any person who shall willfully violate any lawful rule or order of the board or who shall engage in the business of drilling, making, altering, or rehabilitating water wells or monitoring wells without first having obtained a license as in this chapter required or who shall violate any provision of this chapter shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than $500 or imprisonment in a county jail for a term not exceeding 6 months, or both. Any violation of this chapter shall be prosecuted by the county attorney in the county in which the violation occurred or is occurring, and the trial thereof shall be held in that county.

History: En. Sec. 13, Ch. 176, L. 1961; R.C.M. 1947, 66-2613; amd. Sec. 13, Ch. 538, L. 1987.

Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

37-43-313. Disciplinary authority. (1) If the board finds grounds for disciplinary action, as provided in subsection (2), the board may by order:

(a) require a licensee to repair or reconstruct substandard wells at the licensee's expense to meet board standards;

(b) require a licensee to take further training or education;

(c) place probationary terms and conditions on a license;

(d) suspend a license for a period not to exceed 1 year; or

(e) revoke a license, specifying that the licensee may not reapply for licensure for a period of 3 years from the date of revocation.

(2) Grounds for disciplinary action include:

(a) violating the rules, construction standards, or laws established by the board and this chapter;

(b) disobeying an order from the board to repair or reconstruct a substandard well;

(c) violating probationary terms of or conditions on a license;

(d) misrepresenting facts on well log reports, license or renewal applications, or apprenticeship records or in response to board inquiries; or

(e) failing to maintain qualifications for licensure as specified in 37-43-305.

History: En. Sec. 5, Ch. 284, L. 1993.

Compiler's Comments

Effective Date — Applicability: Section 9, Ch. 284, L. 1993, provided: "[This act] is effective on passage and approval and applies to all disciplinary actions initiated by the board of water well contractors after [the effective date of this act]." Effective April 7, 1993.

37-43-314. Injunctions. The board may maintain an action to enjoin a person from engaging in the drilling, making, or construction of water wells or monitoring wells until a license to practice is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court.

History: En. Sec. 3, Ch. 728, L. 1985; amd. Sec. 5, Ch. 538, L. 1987; amd. Sec. 2, Ch. 284, L. 1993; Sec. 37-43-203, MCA 1991; redes. 37-43-314 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 284 deleted former (1) authorizing the Board to adopt disciplinary rules (see 1993 Session Law for text); deleted former (2) requiring disciplinary action to be conducted as a contested case hearing (see 1993 Session Law for text); and made minor changes in style. Amendment effective April 7, 1993.

Effective Date — Applicability: Section 9, Ch. 284, L. 1993, provided: "[This act] is effective on passage and approval and applies to all disciplinary actions initiated by the board of water well contractors after [the effective date of this act]." Effective April 7, 1993.

Cross-References

Contested cases, Title 2, ch. 4, part 6.

Part 4
Miscellaneous Provisions

37-43-401. No action or counterclaim to be maintained except by licensee. No action or counterclaim shall be maintained by any water well contractor, water well driller, or monitoring well constructor in any court in this state with respect to any agreement, work, labor, or materials for which a license is required by this chapter or to recover the agreed price or any compensation under any such agreement or for any such work, labor, or materials for which a license is required by this chapter without alleging and proving that such water well contractor, water well driller, or monitoring well constructor had a valid license at the time of making such agreement and of supplying such labor, work, or materials.

History: En. Sec. 12, Ch. 176, L. 1961; R.C.M. 1947, 66-2612; amd. Sec. 14, Ch. 538, L. 1987.

Cross-References

Counterclaim and cross-claim, Rule 13, M.R.Civ.P. (see Title 25, ch. 20).

37-43-402. Completion of contracts by successor in interest of licensee. Upon the transfer by operation of law to the successor in interest of a licensed water well contractor's or monitoring well constructor's rights under a contract or agreement for the drilling, making, or construction of a water well or monitoring well, the successor in interest to such rights shall be permitted to engage in the business of drilling, making, or construction of water wells or monitoring wells to the extent necessary to perform the obligations of said licensee under such contract or agreement, provided that such engagement in business shall be under the supervision of a licensed water well contractor or monitoring well constructor.

History: En. Sec. 1, Ch. 234, L. 1963; R.C.M. 1947, 66-2615; amd. Sec. 15, Ch. 538, L. 1987.

CHAPTERS 44 THROUGH 46
RESERVED

CHAPTER 47

OUTFITTERS AND GUIDES

Part 1 — General

37-47-101. Definitions.
37-47-102. Determination of what constitutes consideration.

Part 2 — Board of Outfitters

37-47-201. Powers and duties of board relating to outfitters and guides.
37-47-202. Executive director — qualifications — powers and duties.

Part 3 — Licensing

37-47-301. License required — services performed — standards.
37-47-302. Outfitter's qualifications.
37-47-303. Professional guide's qualifications.
37-47-304. Application.
37-47-305. Outfitter's examination.
37-47-306. Fees.
37-47-307. Investigation of applicant — issuance or denial of license.
37-47-308. Kinds of licenses.
37-47-309. Professional guide's license.
37-47-310. Transfer or amendment of outfitter's license.
37-47-311. Limit one license.
37-47-312. Expiration of license.
37-47-313 through 33-47-340 reserved.
37-47-341. Grounds for suspension or revocation of license.
37-47-342. Procedure for suspension or revocation of license — reissuance.
37-47-343. Appeal procedure.
37-47-344. Penalties — disposition of fines.
37-47-345. Enforcement.
37-47-346. Administrative penalty.

Part 4 — Relative Duties of Outfitters, Guides, and Participants

37-47-401. Purpose.
37-47-402. Duties of outfitters and guides.
37-47-403. Duties of participants.
37-47-404. Responsibility for violations of law.

Chapter Cross-References

Penalties cumulative, 87-1-102.

Part 1

General

37-47-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of outfitters provided for in 2-15-1883.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "License year" means that period commencing January 1 and ending December 31 of the same year.

(4) "Nonresident" means a person other than a resident.

(5) "Outfitter" means any person, except a person providing services on real property that he owns for the primary pursuit of bona fide agricultural interests, who:

(a) engages in the business of outfitting for hunting or fishing parties, as the term is commonly understood;

(b) for consideration provides any saddle or pack animal or personal service for hunting or fishing parties or camping equipment, vehicles, or other conveyance, except boats, for any person to hunt, trap, capture, take, or kill any game and accompanies such a party or person on an expedition for any of these purposes;

(c) for consideration furnishes a boat or other floating craft and accompanies any person for the purpose of catching fish; or

(d) for consideration aids or assists any person in locating or pursuing any game animal.

(6) "Participant" means a person using the services offered by a licensed outfitter or professional guide.

(7) "Professional guide" and "guide" mean a person:

(a) who is an employee of an outfitter and who furnishes only personal guiding services in assisting a person to hunt or take game animals or fish and who does not furnish any facilities, transportation, or equipment; or

(b) who has contracted independently with an outfitter and who furnishes personal guiding services and facilities, transportation, or equipment that he owns in assisting a person to hunt or take game birds or fish. A guide who provides independent contractor services to an outfitter may not provide facilities, equipment, or services for overnight use.

(8) "Resident" means a person who qualifies for a resident Montana hunting or fishing license under 87-2-102.

History: **Ap. p. Sec. 1, Ch. 221, L. 1971; amd. Sec. 37, Ch. 511, L. 1973; amd. Sec. 17, Ch. 9, L. 1977; Sec. 26-908, R.C.M. 1947; Ap. p. Sec. 69, Ch. 173, L. 1917; re-en. Sec. 3748, R.C.M. 1921; re-en. Sec. 3748, R.C.M. 1935; amd. Sec. 4, Ch. 173, L. 1949; amd. Sec. 3, Ch. 184, L. 1951; amd. Sec. 2, Ch. 223, L. 1955; amd. Sec. 1, Ch. 541, L. 1975; amd. Sec. 16, Ch. 9, L. 1977; Sec. 26-904, R.C.M. 1947; R.C.M. 1947, 26-904(1), 26-908; amd. Sec. 1, Ch. 170, L. 1981; amd. Sec. 2, Ch. 545, L. 1981; amd. Sec. 1, Ch. 410, L. 1983; amd. Sec. 2, Ch. 528, L. 1987; Sec. 87-4-101, MCA 1985; redes. 37-47-101 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 1, Ch. 565, L. 1989; amd. Sec. 38, Ch. 16, L. 1991.**

Cross-References

Outfitter to perform all activities listed under definition or a more restrictive special license, 37-47-308.

37-47-102. Determination of what constitutes consideration. The providing of the services, property, or equipment mentioned in 37-47-101(5) or the advertising of services to assist persons to hunt, pursue, or take wildlife or to fish shall be presumed to have been for consideration for the purposes of this chapter.

History: **En. Sec. 69, Ch. 173, L. 1917; re-en. Sec. 3748, R.C.M. 1921; re-en. Sec. 3748, R.C.M. 1935; amd. Sec. 4, Ch. 173, L. 1949; amd. Sec. 3, Ch. 184, L. 1951; amd. Sec. 2, Ch. 223, L. 1955; amd. Sec. 1, Ch. 541, L. 1975; amd. Sec. 16, Ch. 9, L. 1977; R.C.M. 1947, 26-904(2); amd. Sec. 3, Ch. 545, L. 1981; amd. Sec. 3, Ch. 528, L. 1987; Sec. 87-4-102, MCA 1985; redes. 37-47-102 by Sec. 11, Ch. 528, L. 1987.**

Part 2
Board of Outfitters

37-47-201. Powers and duties of board relating to outfitters and guides. The board shall:

(1) prepare and publish an information pamphlet which contains the names and addresses of all licensed outfitters. This pamphlet must be available for free distribution as early as possible during each calendar year but not later than the second Friday in March. The pamphlet shall contain the names and addresses of only those outfitters who have a valid license for the current license year.

(2) cooperate with the federal government in matters of mutual concern regarding the business of outfitting and guiding in Montana;

(3) enforce the provisions of this chapter and rules adopted pursuant to this chapter;

(4) establish outfitter standards and professional guide standards;

(5) adopt:

(a) rules of procedure;

(b) rules to administer and enforce this chapter, including but not limited to rules prescribing all requisite qualifications for licensure. These qualifications must include training, experience in activities similar to the service to be provided, knowledge of rules of governmental bodies pertaining to outfitting, and condition and type of gear and equipment.

(c) any reasonable rules, not in conflict with this chapter, necessary for safeguarding the health, safety, and welfare of those persons using the services of outfitters and for the protection of landowners, the general public, and outfitters' employees, agents, and representatives;

(6) hold hearings and proceedings to suspend or revoke licenses of outfitters and professional guides for due cause.

History: En. Sec. 4, Ch. 221, L. 1971; amd. Sec. 38, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-911; amd. Sec. 1, Ch. 490, L. 1981; amd. Sec. 5, Ch. 545, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 4, Ch. 528, L. 1987; Sec. 87-4-104, MCA 1985; redes. 37-47-201 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 1, Ch. 220, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 220 in (5)(b), in second sentence after "experience", inserted "in activities similar to the service to be provided"; at end of (5)(c) inserted "and outfitters' employees, agents, and representatives"; and made minor changes in style. Amendment effective July 1, 1993.

37-47-202. Executive director — qualifications — powers and duties. (1) The department may hire an executive director to assist the board in carrying out its duties under this chapter.

(2) The executive director must:

(a) be a citizen of the United States and a resident of Montana;

(b) have knowledge of outfitting and guiding; and

(c) have at least 2 years' experience in management or equivalent training or education.

(3) The duties of the executive director include:

(a) processing and investigating applications for licensure as an outfitter or guide;

(b) conducting investigations of outfitters and guides that involve violations of this chapter or rules of the board and reporting to the board regarding complaints and investigations of complaints;

(c) coordinating inspections, investigations, and training activities of investigators under this chapter; and

(d) coordinating investigations with other local, state, and federal agencies.

History: En. Sec. 1, Ch. 183, L. 1993.

Compiler's Comments

Effective Date: Section 3, Ch. 183, L. 1993, provided: "[This act] is effective July 1, 1993."

Part 3

Licensing

37-47-301. License required — services performed — standards. (1) A person may not act as an outfitter or professional guide or advertise as an outfitter without first securing a license in accordance with the provisions of this part.

(2) Whenever an outfitter is engaged by any person, the outfitter shall keep and submit records as required by the board.

(3) Outfitters, professional guides, and their employees may not shoot, kill, or take big game animals for or in competition with those employing them while acting under employment as outfitters or professional guides.

(4) Outfitters utilizing lands under the control of the United States government shall obtain the proper permits required by the government office responsible for the area in which the outfitter intends to operate and shall comply with environmental protection standards established for these lands.

(5) Outfitters may not willfully and substantially misrepresent their facilities, prices, equipment, services, or hunting or fishing opportunities.

(6) Outfitters and their employees, agents, and representatives shall take every reasonable measure to provide their advertised services to their clients.

(7) A person may not hold more than one Montana outfitter's license or hold an outfitter's license for more than one corporation, proprietorship, or partnership.

History: En. Sec. 7, Ch. 221, L. 1971; amd. Sec. 20, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-914; amd. Sec. 8, Ch. 545, L. 1981; Sec. 87-4-121, MCA 1985; redes. 37-47-301 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 2, Ch. 565, L. 1989; amd. Sec. 2, Ch. 220, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 220 in (2) substituted "board" for "department"; in (6), after "employees", inserted "agents, and representatives"; inserted (7) limiting a person to one outfitter's license; and made minor changes in style. Amendment effective July 1, 1993.

37-47-302. Outfitter's qualifications. Each applicant for and holder of an outfitter's license or any renewal of a license shall meet the following qualifications:

(1) be a person of at least 18 years of age who is physically capable and mentally competent to perform the duties of an outfitter as prescribed by the board;

(2) own or hold under written lease or represent a company, corporation, or partnership who owns or holds under written lease the equipment and facilities as are necessary to provide the services advertised, contracted for, or agreed upon between the outfitter and the outfitter's clients (all equipment and facilities are subject to inspection at all reasonable times and places by the board or its designated agent);

(3) be a person who has demonstrated a respect for and compliance with the laws of any state or of the United States and all rules promulgated under those laws as to matters of fish and game, conservation of natural resources, and preservation of the natural ecosystem without pollution of the ecosystem;

(4) have not been convicted or forfeited bond of $100 or more on more than one violation of this chapter or the fish and game laws or applicable regulations of any state or the United States within the past 5 years;

(5) have not, at any time, practiced fraud, deception, or material misrepresentation in procuring any previous outfitter's, professional guide's, or conservation license from the state of Montana;

(6) have not, at any time, promulgated any false or misleading advertising relating to the business of outfitting;

(7) have not been finally adjudged by a court of law guilty of any substantial breach of written or oral contract with any person utilizing the applicant's services as an outfitter or professional guide during the 2 years preceding that for which the application is made;

(8) have not committed any negligent act or misconduct while acting as an outfitter or professional guide that caused a danger or unreasonable risk of danger to person or property of any client of the outfitter or professional guide during the license year immediately preceding that for which the application is made;

(9) have not, at any time, pleaded guilty to or been adjudged by a court guilty of a felony, unless civil rights have been restored pursuant to law. A person may not apply for or hold an outfitter's license during any period of time in which a sentence has been deferred or suspended for a felony.

History: En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(3)(a) thru (3)(k); amd. Sec. 9, Ch. 545, L. 1981; amd. Sec. 8, Ch. 239, L. 1983; amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-122, MCA 1985; redes. 37-47-302 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 3, Ch. 220, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 220 at end of (1) inserted "as prescribed by the board"; in (4), after "violation of", inserted "this chapter or"; in (7) extended violation period to "2 years preceding" from "the license year immediately preceding"; deleted (10) that read: "(10) have substantially complied with all board regulations and state and federal laws concerning outfitters and professional guides, if the applicant has previously held a license as an outfitter or professional guide"; and made minor changes in style. Amendment effective July 1, 1993.

37-47-303. Professional guide's qualifications. (1) An applicant for a professional guide's license shall meet the following requirements:

(a) be a person of at least 18 years of age who is physically capable and mentally competent to perform the duties of a professional guide;

(b) be endorsed and recommended by an outfitter with a valid license;

(c) have not been convicted or forfeited bond of $100 or more on more than one violation of this chapter or the fish and game laws or applicable regulations of the state of Montana or the United States within the past 5 years;

(d) have not committed any gross negligent act or misconduct while acting as a guide that caused an accident or injury to person or property of any client of an outfitter during the license year immediately preceding that for which the application is made;

(e) have not, at any time, pleaded guilty to or been adjudged by a court guilty of a felony, unless civil rights have been restored pursuant to law. A person may not apply for or hold a professional guide's license during any period of time in which a sentence has been deferred or suspended for a felony.

(2) A professional guide shall have been issued a valid wildlife conservation license.

History: En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(4), (5); amd. Sec. 10, Ch. 545, L. 1981; Sec. 87-4-123, MCA 1985; redes. 37-47-303 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 4, Ch. 220, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 220 in (1)(c), after "violation of", inserted "this chapter or"; and made minor changes in style. Amendment effective July 1, 1993.

37-47-304. Application. (1) Each applicant for an outfitter's or professional guide's license shall make application for license upon a form to be prescribed and furnished by the board which shall include:

(a) the applicant's full name, residence, address, conservation license number, driver's license number, birth date, physical description, and telephone number;

(b) the address of the applicant's principal place of business in the state of Montana;

(c) the amount and kind of property and equipment owned and used in the outfitting business of the applicant;

(d) the experience of the applicant, including years of experience as an outfitter or professional guide, knowledge of areas in which the applicant has operated and intends to operate, and ability to cope with weather conditions and terrain;

(e) a signed statement of the licensed outfitter by whom the professional guide is to be employed or retained as an independent contractor that the professional guide is in fact to be employed or retained as an independent contractor by the outfitter and stating that the outfitter recommends the applicant for the applicant's qualifications;

(f) an affidavit by the outfitter to the board that the equipment listed on the application is in fact owned or leased by the applicant, is in good operating condition, and is sufficient and satisfactory for the services advertised or contemplated to be performed by the applicant;

(g) a statement of the maximum number of guests to be taken at any one time;

(h) the written approval of the appropriate agency or landowner on whose lands the applicant will provide services or establish hunting camps.

(2) Applications for an outfitter's license must be in the name of an individual person only. Applications involving corporations, proprietorships,

or partnerships must be made by one individual person who qualifies under the provisions of this part. Any license issued pursuant to this part must be in the name of that person. The license must specifically state that the license is issued for the use and benefit of the named corporation, proprietorship, or partnership involved. Any revocation or suspension of a license is binding upon the individual person and the corporation, proprietorship, or partnership for the use and benefit of which the license was originally issued.

(3) Application must be made to and filed with the board.

(4) Only one application for an outfitter's license may be made in any one license year. If any application is denied, subsequent applications by the same applicant for the license year involved are void, except as provided in 37-47-308.

History: En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(1), (2), (13); amd. Sec. 11, Ch. 545, L. 1981; amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-124, MCA 1985; redes. 37-47-304 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 3, Ch. 565, L. 1989; amd. Sec. 5, Ch. 220, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 220 in (1)(h) inserted "provide services or"; in (2) in three places inserted references to proprietorships; in (4), after "outfitter's", deleted "or professional guide's"; and made minor changes in style. Amendment effective July 1, 1993.

37-47-305. Outfitter's examination. Each applicant for an outfitter's license shall pass a standard examination administered by the board or its agent. The examination must require general and sufficient knowledge displaying and indicating ability to perform the services contemplated with efficiency and with safety to the health and welfare of persons employing the services. The examination must test the applicant's knowledge of subjects that apply to the type of license applied for and may include the following subjects:

(1) federal and state fish and game laws and regulations;
(2) practical woodsmanship;
(3) general knowledge of big game;
(4) field preparation of trophies;
(5) care of game meat;
(6) use of outfitter's gear as listed on the application;
(7) knowledge of area and terrain;
(8) knowledge of firearms;
(9) federal and state regulations as applicable to outfitting;
(10) first aid;
(11) boat safety;
(12) water safety;
(13) care and safety of livestock.

History: En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(3)(l); amd. Sec. 12, Ch. 545, L. 1981; amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-125, MCA 1985; redes. 37-47-305 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 6, Ch. 220, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 220 in third sentence substituted "and may include" for "in"; and made minor changes in style. Amendment effective July 1, 1993.

37-47-306. Fees. (1) The board shall establish fees commensurate with costs as provided in 37-1-134.

(2) Applications shall be accompanied by a license fee as specified by the board.

(3) If a nonresident resides in a state requiring residents of the state of Montana to pay in excess of the amount established by the board for a similar license, the fee for such nonresident outfitter's or professional guide's license shall be the same amount as the higher fee charged in the state where the nonresident resides.

(4) The license fees must be deposited in the state special revenue fund and must be used by the board to investigate the applicant, to enforce this part, and for administrative costs, subject to 37-1-101(6).

History: Ap. p. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-915, R.C.M. 1947; Ap. p. Sec. 10, Ch. 221, L. 1971; amd. Sec. 23, Ch. 9, L. 1977; Sec. 26-917, R.C.M. 1947; R.C.M. 1947, 26-915(8) thru (11), 26-917; amd. Sec. 14, Ch. 545, L. 1981; amd. Sec. 4, Ch. 192, L. 1983; amd. Sec. 5, Ch. 528, L. 1987; Sec. 87-4-127, MCA 1985; redes. 37-47-306 by Sec. 11, Ch. 528, L. 1987.

37-47-307. Investigation of applicant — issuance or denial of license. (1) The board shall investigate each applicant for an outfitter's or professional guide's license and determine the applicant's qualifications.

(2) The board may deny or refuse to issue any new license or to renew any previous license if the applicant does not meet the qualifications stated in this section. In the event that any application for license is denied or refused, the board shall immediately notify the applicant, setting forth in the notice the grounds upon which the denial or refusal is based.

(3) Final decision as to issuance of renewal licenses must be made not later than 30 days from the date of receipt of the completed application for renewal and not later than 90 days from the date of receipt of a completed application for a new license.

(4) A licensee in good standing is entitled to a new license for the ensuing license year upon complying with the provisions of this chapter and renewal deadlines and fees imposed by rule of the board and completing an application for license renewal on a form provided by the board.

History: En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(12); amd. Sec. 15, Ch. 545, L. 1981; amd. Sec. 9, Ch. 239, L. 1983; amd. Sec. 6, Ch. 528, L. 1987; Sec. 87-4-128, MCA 1985; redes. 37-47-307 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 7, Ch. 220, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 220 in (4), after "chapter", inserted "and renewal deadlines and fees imposed by rule of the board and" and after "provided by the board" deleted "and payment of the renewal fee, but is exempt from having to retake the written examination"; deleted (5) that read "(5) An outfitter licensee must make an application for license renewal by January 1 of the license year. A penalty fee of $50 will be charged in addition to the regular resident or nonresident outfitter's license fee if the application for such license is not completed and made by January 1 of the license year. This subsection does not apply to a new applicant for an outfitter's license"; and made minor changes in style. Amendment effective July 1, 1993.

37-47-308. Kinds of licenses. (1) When all the conditions of licensure have been satisfied, the board shall issue a license stating the outfitter or guide functions that the applicant is qualified and approved to perform.

(2) The license must be in the form prescribed and is valid for the licensing year in which issued.

(3) If the application is denied, the board shall notify the applicant in writing of the reasons for the denial, and if the reasons are corrected, a license must be issued upon reapplication.

History: En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977; R.C.M. 1947, 26-916(1); amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-129, MCA 1985; redes. 37-47-308 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 8, Ch. 220, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 220 at beginning of (1) substituted "When all the conditions of licensure have been satisfied" for "After receipt of the application and when all the conditions and requirements of this part have been satisfied" and after "board shall issue" substituted "a license stating the outfitter or guide functions that the applicant is qualified and approved to perform" for "either of the following licenses, depending upon its determination of the applicant's ability and the service that the applicant can perform with the equipment listed on his application:

(a) a general license authorizing him to perform all the functions of an outfitter as that term is defined in 37-47-101; or

(b) a special license authorizing him to perform only the function of outfitting listed on the license"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Limit on application for an outfitter's or guide's license, 37-47-304.

37-47-309. Professional guide's license. (1) For the purposes of this part, a person may serve as a professional guide under an outfitter's license, after submitting an application with the proper license fee, until the license is issued or denied.

(2) To be valid, a professional guide's license must bear the signature and outfitter's license number of the endorsing outfitter and is valid only while the holder of the license is employed or retained by the endorsing outfitter.

History: En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977; R.C.M. 1947, 26-916(2), (3); amd. Sec. 16, Ch. 545, L. 1981; Sec. 87-4-130, MCA 1985; redes. 37-47-309 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 4, Ch. 565, L. 1989; amd. Sec. 9, Ch. 220, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 220 in (2), after "employed or retained", deleted "as an independent contractor"; and made minor changes in style. Amendment effective July 1, 1993.

37-47-310. Transfer or amendment of outfitter's license. (1) An outfitter's license may not be transferred during any license year.

(2) An individual person may, upon proper showing, have that person's outfitter's license amended to indicate that the license is being held for the use and benefit of a named proprietorship, partnership, or corporation.

(3) Subject to approval by the board, an immediate member of the family of a deceased licensed outfitter may continue to outfit for the deceased outfitter's unexpired license year or until the heirs or personal representative of the estate sells the outfitting business or obtains relicensure of the business.

History: En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977; R.C.M. 1947, 26-916(4); amd. Sec. 17, Ch. 545, L. 1981; amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-131, MCA 1985; redes. 37-47-310 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 10, Ch. 220, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 220 near end of (2) inserted "proprietorship"; and made minor changes in style. Amendment effective July 1, 1993.

37-47-311. Limit one license. No person may hold more than one outfitter's license either for his own benefit or for the use and benefit of a partnership or corporation, nor may the name of any partnership or corporation appear on more than one current outfitter's license.

History: **En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977; R.C.M. 1947, 26-916(5); Sec. 87-4-132, MCA 1985; redes. 37-47-311 by Sec. 11, Ch. 528, L. 1987.**

37-47-312. Expiration of license. Notwithstanding any other provision or law, a license shall expire on the last day of the license year for which it was issued.

History: **En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977; R.C.M. 1947, 26-916(6); Sec. 87-4-133, MCA 1985; redes. 37-47-312 by Sec. 11, Ch. 528, L. 1987.**

37-47-313 through 33-47-340 reserved.

37-47-341. Grounds for suspension or revocation of license. Every license or right to apply for and hold the license may be denied, suspended, or revoked upon any of the following grounds:

(1) having ceased to meet all of the qualifications for holding a license;

(2) fraud or deception in procuring a license;

(3) fraudulent, untruthful, or misleading advertising;

(4) having pleaded guilty to or been adjudged by a court guilty of a felony, including a case in which the sentence is suspended or imposition of the sentence is deferred, unless civil rights have been restored pursuant to law;

(5) two convictions or bond forfeitures of $100 or more as to violations of the fish and game or outfitting laws or regulations of any state or the United States within the past 5 years;

(6) a substantial breach of any contract with any person using the services of the license holder provided that the breach is established as a matter of final judgment in a court of law;

(7) the willful employment of or contracting with an unlicensed guide by an outfitter;

(8) negligence or misconduct while acting as an outfitter or professional guide that causes an accident or injury to person or property of any client of the outfitter or professional guide; or

(9) misconduct as defined by board rule.

History: **En. Sec. 11, Ch. 221, L. 1971; amd. Sec. 5, Ch. 541, L. 1975; amd. Sec. 8, Ch. 417, L. 1977; R.C.M. 1947, 26-918; amd. Sec. 18, Ch. 545, L. 1981; Sec. 87-4-141, MCA 1985; redes. 37-47-341 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 5, Ch. 565, L. 1989; amd. Sec. 11, Ch. 220, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 220 in introductory clause inserted "denied"; in (5) substituted "any state" for "the state of Montana"; in (7), after "unlicensed", deleted "professional"; inserted (9) concerning misconduct; and made minor changes in style. Amendment effective July 1, 1993.

37-47-342. Procedure for suspension or revocation of license — reissuance. (1) Proceedings for the revocation or suspension of a license issued hereunder may be taken upon charge or recommendation of any person. All such charges or recommendations must be made in writing, must state the facts upon which such charge or recommendation is based, and must be signed and sworn to by the person making the charge or recommendation. Any such charge or recommendation shall be filed with the board. Thereupon, the board shall initiate a preliminary investigation of all facts in connection with the charge.

(2) If the accusation be deemed to be unfounded or trivial, the board shall dismiss the same and will advise the licensee charged and the complaining party of the action. If the board determines the charge or recommendation to have good cause and to be sufficiently founded, it shall appoint a hearing officer who shall conduct a hearing on such charges in accordance with the Montana Administrative Procedure Act.

(3) The board thereupon shall cause a copy of the charge and a record of the investigation to be served upon the licensee involved not less than 20 days prior to the day set for hearing thereon, which hearing shall be before an appointed hearing officer at a time and place set by such officer. At the hearing, the licensee involved may be represented by counsel. After full, fair, and impartial hearing, the board may suspend the accused's license or his right to hold a license for a period not to exceed 3 years, may order the license revoked, or may dismiss the charge or recommendation based upon the facts shown at the hearing.

(4) A revoked or suspended license may be reissued or reinstated at the discretion of the board.

History: En. Sec. 12, Ch. 221, L. 1971; amd. Sec. 6, Ch. 541, L. 1975; amd. Sec. 9, Ch. 417, L. 1977; R.C.M. 1947, 26-919; amd. Sec. 19, Ch. 545, L. 1981; amd. Sec. 7, Ch. 528, L. 1987; Sec. 87-4-142, MCA 1985; redes. 37-47-342 by Sec. 11, Ch. 528, L. 1987.

Cross-References

Contested cases — Montana Administrative Procedure Act, Title 2, ch. 4, part 6.

37-47-343. Appeal procedure. Any person who feels aggrieved by a final order of the board denying issuance of, suspension of, or revocation of a license as an outfitter or professional guide may petition for judicial review as provided in Title 2, chapter 4, part 7.

History: En. Sec. 13, Ch. 221, L. 1971; amd. Sec. 7, Ch. 541, L. 1975; amd. Sec. 10, Ch. 417, L. 1977; R.C.M. 1947, 26-920; amd. Sec. 20, Ch. 545, L. 1981; amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-143, MCA 1985; redes. 37-47-343 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 12, Ch. 220, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 220 substituted language regarding judicial review of final order concerning denial of or suspension or revocation of a license for former language providing an appeal to the District Court (see 1993 Session Law for text). Amendment effective July 1, 1993.

Cross-References

Judicial review of contested cases — Montana Administrative Procedure Act, Title 2, ch. 4, part 7.

37-47-344. Penalties — disposition of fines. (1) A person who violates any provision of this chapter or rule adopted under this chapter is guilty of a misdemeanor and is punishable by a fine not exceeding $500.

(2) A person who represents to the public that the person is an outfitter or who purposely engages in outfitting without a license as required by this chapter is guilty of a misdemeanor and is punishable by a fine of not less than $200 and not more than $1,000, up to 1 year in the county jail, or both. Each day of violation is a separate offense. In addition, the person must be assessed and pay to the board the amount of all costs incurred by the board in investigating and preparing the case for trial and all prosecution costs, including but not limited to witness, transportation, and per diem expenses.

(3) Fifty percent of all fines paid under this section must be deposited in the general fund of the county in which the conviction is obtained, and 50% must be deposited in the state special revenue fund for the use of the board in enforcing this chapter. All investigation, preparation, and trial costs paid under this section must be deposited in the state special revenue fund for the use of the board in enforcing the provisions of this chapter. The board may reimburse other agencies for costs reasonably incurred in the enforcement of this chapter.

(4) A person convicted of engaging in outfitting without a license shall reimburse the full amount of any fees received to the person to whom illegal outfitter services were provided.

History: En. Sec. 8, Ch. 528, L. 1987; amd. Sec. 13, Ch. 220, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 220 in (2), in first sentence, increased maximum penalty from a $500 fine to a $1,000 fine, imprisonment, or both, inserted second sentence establishing each day of violation as a separate offense, and in third sentence, after "assessed", inserted "and pay to the board", and at end inserted requirement for payment of all prosecution costs and expenses; in (3) inserted last two sentences regarding deposit of costs in special revenue fund and reimbursement of enforcement costs; inserted (4) regarding reimbursement of outfitter fees paid for illegal services; and made minor changes in style. Amendment effective July 1, 1993.

37-47-345. Enforcement. Investigations and arrests for violations of this chapter may be made by any peace officer; warden of the department of fish, wildlife, and parks; or federal agency enforcement personnel.

History: En. Sec. 9, Ch. 528, L. 1987.

Cross-References

Enforcement powers of wardens, 87-1-506.

37-47-346. Administrative penalty. The board may assess an administrative penalty of not more than $500 for each violation of this chapter or a rule adopted under this chapter, subject to the procedures set out in 37-47-342 and 37-47-343.

History: En. Sec. 14, Ch. 220, L. 1993.

Compiler's Comments

Effective Date: Section 20, Ch. 220, L. 1993, provided: "[This act] is effective July 1, 1993."

Part 4

Relative Duties of Outfitters, Guides, and Participants

37-47-401. Purpose. It is recognized that some activities conducted by outfitters and guides within the scope of their authorized services are inherently hazardous to participants regardless of all feasible safety measures that can be taken. It is the purpose of this part to define those areas of responsibility and affirmative acts or omissions for which outfitters and guides are liable for loss, damage, or injury and those risks for which the participant expressly assumes or shall be considered to have voluntarily assumed the risk of loss or damage.

History: En. Sec. 2, Ch. 170, L. 1981; Sec. 87-4-161, MCA 1985; redes. 37-47-401 by Sec. 11, Ch. 528, L. 1987.

37-47-402. Duties of outfitters and guides. An outfitter or guide offering professional services in this state shall:

(1) act as would a reasonably prudent member of the profession while engaging in providing the services authorized to be performed by a licensed member of the profession;

(2) comply with all standards adopted by rule by the board.

History: En. Sec. 3, Ch. 170, L. 1981; Sec. 87-4-162, MCA 1985; redes. 37-47-402 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 15, Ch. 220, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 220 in (2), at end, substituted "board" for "department of fish, wildlife, and parks"; and made minor changes in style. Amendment effective July 1, 1993.

37-47-403. Duties of participants. (1) A participant shall:

(a) act as would a reasonably prudent person when engaging in the activities offered by a licensed outfitter or guide in this state;

(b) receive permission from the outfitter or guide prior to embarking on any self-initiated activity and inform the outfitter or guide of his plans and intentions upon receiving permission to engage in such self-initiated activity.

(2) A participant may not:

(a) interfere with the running or operation of an outfitter's or guide's activities when such activities conform to the standards of care set forth in 37-47-402;

(b) use the outfitter's or guide's equipment, facilities, or services unless the participant has requested and received permission from the outfitter or guide;

(c) knowingly, purposely, or negligently engage in any type of conduct that contributes to or causes injury to himself or any other person.

History: En. Sec. 4, Ch. 170, L. 1981; Sec. 87-4-163, MCA 1985; redes. 37-47-403 by Sec. 11, Ch. 528, L. 1987.

37-47-404. Responsibility for violations of law. (1) Any person accompanying a hunting or fishing party as an outfitter or agent or employee of the outfitter is equally responsible with any person or party employing the person as an outfitter for any violation of fish and game laws unless the violation is reported to a peace officer by the outfitter, agent, or employee and the outfitter, agent, or employee was not an active participant. An outfitter or agent or employee of an outfitter who willfully fails or refuses to report any violation of fish and game laws is liable to the penalties provided in this section. If any professional guide violates the laws or applicable regulations relating to fish and game, outfitting, or guiding with actual or implied knowledge of an outfitter employing the guide, the outfitter is legally responsible for the violation for all purposes under the laws or regulations if the outfitter fails to report the violation to the proper authority.

(2) An outfitter or professional guide shall report any violation or suspected violation of fish and game laws that the outfitter or guide knows or reasonably should have known has been committed by the employees, agents, representatives, clients, or participants in the outfitting or guiding activity. The violation or suspected violation must be reported to a peace officer at the earliest possible opportunity.

(3) A person may not hire or retain any outfitter or professional guide unless the outfitter or professional guide is currently licensed in accordance with the laws of the state of Montana.

History: En. Sec. 71, Ch. 173, L. 1917; re-en. Sec. 3750, R.C.M. 1921; re-en. Sec. 3750, R.C.M. 1935; amd. Sec. 6, Ch. 173, L. 1949; amd. Sec. 5, Ch. 184, L. 1951; amd. Sec. 3, Ch. 223, L. 1955; amd. Sec. 2, Ch. 541, L. 1975; R.C.M. 1947, 26-906; amd. Sec. 4, Ch. 545, L. 1981; Sec. 87-4-103, MCA 1985; redes. 37-47-404 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 16, Ch. 220, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 220 in (1), at end of first sentence after "fish and game laws", inserted remainder of sentence concerning reporting of violation and the lack of participation by the outfitter or an agent; inserted (2) concerning reporting of violations; and made minor changes in style. Amendment effective July 1, 1993.

CHAPTERS 48 AND 49

RESERVED

CHAPTER 50

PUBLIC ACCOUNTANTS

Part 1 — General

37-50-101. Definitions.
37-50-102. Exemptions.

Part 2 — Board of Public Accountants

37-50-201. Organization — general rulemaking power — quorum — seal — records.
37-50-202. Compensation of members — expenses.
37-50-203. Rules of the board.
37-50-204. Rulemaking powers relating to reexaminations.
37-50-205. Duties of the department.

Part 3 — Licensing

37-50-301. Illegal use of title.
37-50-302. Certified public accountants — certification — qualifications and requirements.
37-50-303. Public accountants — licensure — qualifications and requirements.
37-50-304. Public accountants — licensure without examination of former military personnel — examination otherwise required.
37-50-305. Education requirements.
37-50-306. Repealed.
37-50-307. Repealed.
37-50-308. Examination.
37-50-309. Credit for examinations taken in other states.
37-50-310. Existing certificates sufficient.
37-50-311. Certified public accountants — waiver of examination for holders of foreign or out-of-state licenses, certificates, permits, or degrees.
37-50-312. Public accountants — waiver of examination for holders of out-of-state license.
37-50-313. Registration of foreign accountants — restriction on title used.
37-50-314. Annual permit required — display.
37-50-315. Deposit of moneys collected.
37-50-316. Other license fees prohibited.
37-50-317. Certificate, license, and permit expiration — renewal fees.
37-50-318 through 37-50-320 reserved.

37-50-321. Revocation and suspension of certificate, license, or permit or refusal to renew permit — recovery of costs.
37-50-322. Reinstatement of certificate, license, or permit to practice.
37-50-323 through 37-50-330 reserved.
37-50-331. Partnership composed of certified public accountants — registration.
37-50-332. Corporation composed of certified public accountants — registration.
37-50-333. Partnership composed of public accountants — registration.
37-50-334. Corporation composed of public accountants — registration.
37-50-335. Registration of offices.
37-50-336. Revocation or suspension of partnership or corporation registration.
37-50-337 through 37-50-340 reserved.
37-50-341. Initiation of proceedings — hearings and rulemaking.
37-50-342. Violation.

Part 4 — Miscellaneous Provisions

37-50-401. False statements by accountants — misdemeanor — penalty.
37-50-402. Privileged communications — exceptions.
37-50-403. Nonliability — evidential privilege — application to nonprofit corporations.

Chapter Cross-References

Licensed public accountant — exemption from regulation of escrow business, 32-7-103.

Professional service corporations, Title 35, ch. 4.

Part 1
General

37-50-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of public accountants provided for in 2-15-1866.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Practice of public accounting" means performing or offering to perform by a person certified under 37-50-302 or licensed under 37-50-303, for a client or potential client, one or more types of services involving the use of accounting or auditing skills, including:

(a) the issuance of reports or financial statements on which the public may rely;

(b) one or more types of management advisory or consulting services;

(c) the preparation of tax returns; or

(d) furnishing advice on tax matters.

History: En. 66-1807.1 by Sec. 160, Ch. 350, L. 1974; R.C.M. 1947, 66-1807.1; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 2, Ch. 382, L. 1989.

37-50-102. Exemptions. Nothing contained in this chapter shall prohibit any person not a certified public accountant or licensed public accountant from serving as an employee of or an assistant to a certified public accountant or a licensed public accountant holding a permit to practice under 37-50-314 or a partnership or corporation composed of certified public accountants or licensed public accountants registered under this chapter or a foreign accountant registered under 37-50-313, provided that such employee or assistant shall not issue any accounting or financial statement over his name.

History: En. Sec. 27, Ch. 118, L. 1969; R.C.M. 1947, 66-1839; amd. Sec. 4, Ch. 684, L. 1979; amd. Sec. 1, Ch. 335, L. 1983.

Part 2

Board of Public Accountants

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1865.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-50-201. Organization — general rulemaking power — quorum — seal — records. (1) The board shall elect annually a chairman and a secretary from its members.

(2) The board may adopt rules for the conduct of its affairs and the administration of this chapter.

(3) A quorum for the transaction of business consists of three members of the board.

(4) The board shall have a seal which shall be judicially noticed.

(5) The department shall keep records of the board's proceedings. In a proceeding in court, civil or criminal, arising out of or founded on this chapter, copies of these records certified as correct under the seal of the board are admissible in evidence as tending to prove the content of these records.

History: En. Sec. 3, Ch. 118, L. 1969; amd. Sec. 162, Ch. 350, L. 1974; amd. Sec. 35, Ch. 439, L. 1975; R.C.M. 1947, 66-1815(1) thru (5); amd. Sec. 5, Ch. 684, L. 1979; amd. Sec. 2, Ch. 335, L. 1983.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Public records, Title 2, ch. 6.

Entries in official books and records prima facie evidence, 26-1-605.

Entry made by officer or Board prima facie evidence, 26-1-606.

Requirement of authentication or identification, Rule 901, M.R.Ev. (see Title 26, ch. 10).

Self-authentication, Rule 902, M.R.Ev. (see Title 26, ch. 10).

Public records, Rule 1005, M.R.Ev. (see Title 26, ch. 10).

Duties of Department, 37-1-101.

37-50-202. Compensation of members — expenses. Each member of the board is entitled to receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 3, Ch. 118, L. 1969; amd. Sec. 162, Ch. 350, L. 1974; amd. Sec. 35, Ch. 439, L. 1975; R.C.M. 1947, 66-1815(6); amd. Sec. 6, Ch. 684, L. 1979; amd. Sec. 28, Ch. 474, L. 1981.

37-50-203. Rules of the board. (1) The board may adopt such rules, consistent with the purposes of this chapter, as it considers necessary.

(2) The board shall adopt:

(a) rules of professional conduct appropriate to establish and maintain a high standard of integrity, dignity, and competency in the profession of public accounting, including competency in specific fields of public accounting;

(b) rules of procedure governing the conduct of matters before the board;

(c) rules governing education requirements, as provided in 37-50-305, for issuance of the certificate of a certified public accountant and the license for licensed public accountant;

(d) rules prescribing requirements for continuing education to be met by certified public accountants and licensed public accountants, in order to maintain their professional knowledge and competence, as a condition to continuing in the practice of public accounting. In issuing rules and individual orders regarding continuing education, the board in its discretion:

(i) may, among other things, use or rely upon guidelines and pronouncements of recognized educational and professional associations;

(ii) may prescribe the content, duration, and organization of courses; and

(iii) shall take into account the accessibility to applicants of such continuing education as it may require and any impediments to interstate practice of public accounting that may result from differences in such requirements in other states;

(e) rules governing partnerships and corporations practicing public accounting, including but not limited to rules concerning their style, name, title, and affiliation with any other organization and establishing reasonable standards with respect to professional liability insurance and unimpaired capital and prescribing joint and several liability for torts relating to professional services for shareholders of any such corporation failing to comply with such standards;

(f) internal rules considered necessary to initiate and conduct investigations and protect the confidences of the client of any certified public accountant or licensed public accountant subjected to board disciplinary proceedings;

(g) rules defining requirements for accounting experience, not exceeding 2 years, for issuance of the initial annual permit; and

(h) rules to enforce the provisions of this chapter, the purpose of which rules shall be to provide for the monitoring of the profession of public accounting and to maintain the quality of the accounting profession.

History: **En. Sec. 5, Ch. 118, L. 1969; amd. Sec. 164, Ch. 350, L. 1974; R.C.M. 1947, 66-1817; amd. Sec. 7, Ch. 684, L. 1979; amd. Sec. 3, Ch. 335, L. 1983.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Duty of Board to adopt rules on conduct, 37-1-131.

37-50-204. Rulemaking powers relating to reexaminations. The board shall have power to prescribe by uniform rule for the following:

(1) the terms and conditions under which a candidate who passes one or more subjects of examination may be reexamined in only the remaining subjects, with credit for the subjects previously passed;

(2) a reasonable waiting period for a candidate's reexamination in a subject he has failed;

(3) the maximum number of reexaminations for which a candidate may apply;

(4) the fees to be charged each candidate for initial examinations and special examinations, which shall be commensurate with costs. With respect to reexaminations, a fee commensurate with costs may be charged for each subject in which the candidate is reexamined.

History: **En. Sec. 14, Ch. 118, L. 1969; amd. Sec. 9, Ch. 533, L. 1977; R.C.M. 1947, 66-1826.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-50-205. Duties of the department. The department shall:

(1) assist the board in transactions of its business and keep a record of the board's official action; and

(2) assess to the board the reasonable costs of the department incurred in assisting the board.

History: En. Sec. 21, Ch. 684, L. 1979.

Cross-References

Duties of the Department, 37-1-101.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-50-301. Illegal use of title. (1) No person may assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a certified public accountant unless such person holds a current certificate as a certified public accountant under this chapter. However, a foreign accountant who has registered under the provisions of 37-50-313 may use the title under which he is generally known in his country, followed by the name of the country from which he received his certificate, license, or degree.

(2) No partnership or corporation shall assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such partnership or corporation is composed of certified public accountants unless it is registered under 37-50-331 or 37-50-332, whichever is applicable, and all of its offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335.

(3) No person may assume or use the title or designation "licensed public accountant", "public accountant", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a public accountant unless such person holds a current license as a licensed public accountant under this chapter.

(4) No partnership or corporation may assume or use the title or designation "licensed public accountant", "public accountant", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such partnership or corporation is composed of public accountants unless it is registered under 37-50-331, 37-50-332, 37-50-333, or 37-50-334, whichever is applicable, and all of its offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335.

(5) No person, corporation, or partnership may assume or use the title or designation "certified accountant", "chartered accountant", "enrolled accountant", "licensed accountant", "registered accountant", or any other title or designation likely to be confused with "certified public accountant", "licensed public accountant", "public accountant" or any of the abbreviations "CA", "EA", "LA", or "RA" or similar abbreviations likely to be confused with "CPA". However, a foreign accountant who has registered under 37-50-313 may use the title under which he is generally known in his country, followed by the name of the country from which he received his certificate, license, or degree.

(6) No person may sign or affix his name or any trade or assumed name used by him in his profession or business with any wording indicating that he has expert knowledge in accounting or auditing to any accounting or financial statement or to any opinion on, report on, or certificate to any accounting or financial statement unless he holds a current permit issued under 37-50-314 and all of his offices in this state for the practice of public accounting are maintained and registered under 37-50-335. However, the provisions of this subsection do not prohibit any officer, employee, partner, or principal of any organization from affixing his signature to any statement or report in reference to the financial affairs of that organization with any wording designating the position, title, or office which he holds in that organization, nor do the provisions of this subsection prohibit any act of a public official or public employee in the performance of his duties as such.

(7) No person may sign or affix a partnership or corporation name with any wording indicating that it is a partnership or corporation composed of persons having expert knowledge in accounting or auditing to any accounting or financial statement or to any report on or certificate to any accounting or financial statement unless the partnership or corporation is registered under 37-50-331, 37-50-332, 37-50-333, or 37-50-334 and all of its offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335.

(8) No person may assume or use the title or designation "certified public accountant" or "public accountant" in conjunction with names indicating or implying that there is a partnership or corporation or in conjunction with the designation "and company" or "and co." or a similar designation if, in any such case, there is in fact no bona fide partnership or corporation registered under 37-50-331, 37-50-332, 37-50-333, or 37-50-334. However, it is lawful for a sole proprietor to continue the use of the deceased's name in connection with his business for a reasonable period of time after the death of a former partner.

History: En. Sec. 26, Ch. 118, L. 1969; amd. Sec. 5, Ch. 207, L. 1974; amd. Sec. 14, Ch. 101, L. 1977; R.C.M. 1947, 66-1838; amd. Sec. 8, Ch. 684, L. 1979; amd. Sec. 162, Ch. 575, L. 1981; amd. Sec. 4, Ch. 335, L. 1983.

37-50-302. Certified public accountants — certification — qualifications and requirements. The board shall grant an initial certificate as a certified public accountant to any person who:

(1) is of good moral character;

(2) has successfully passed the certified public accountants' examination; and

(3) meets the requirements of education set forth in this chapter and in board rules.

History: **En. Sec. 7, Ch. 118, L. 1969; amd. Sec. 5, Ch. 168, L. 1971; amd. Sec. 166, Ch. 350, L. 1974; R.C.M. 1947, 66-1819; amd. Sec. 9, Ch. 684, L. 1979; amd. Sec. 5, Ch. 335, L. 1983.**

37-50-303. Public accountants — licensure — qualifications and requirements. The board shall grant an initial license as a licensed public accountant to any person who:

(1) is of good moral character;

(2) meets the requirements of education set forth in this chapter and board rules; and

(3) complies with the qualifications and requirements in any one of the subsections of 37-50-304.

History: **En. Sec. 8, Ch. 118, L. 1969; amd. Sec. 6, Ch. 168, L. 1971; amd. Sec. 167, Ch. 350, L. 1974; R.C.M. 1947, 66-1820; amd. Sec. 6, Ch. 341, L. 1981; amd. Sec. 163, Ch. 575, L. 1981; amd. Sec. 6, Ch. 335, L. 1983.**

Cross-References

Rules for determining residency, 1-1-215.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-50-304. Public accountants — licensure without examination of former military personnel — examination otherwise required. (1) Persons serving in the armed forces of the United States on July 1, 1969, who immediately prior to entering this service held themselves out to the public as public accountants and who were engaged as principals in this state in the practice of public accounting as their principal occupation prior to service in the armed forces may register with the department within 6 months after the date of their separation from active service and, on registration and payment of the license fee, be issued a license by the department as a licensed public accountant. A principal is either the owner of or a partner in an existing accounting practice on July 1, 1969.

(2) In order to be issued a license as a licensed public accountant, a person who does not qualify under subsection (1) shall successfully complete those portions of the examination provided for in 37-50-308 prescribed by the board by rule. The board may require successful completion of alternate portions of the examination for applicants holding valid United States treasury cards at the time of taking the examination.

History: **En. Sec. 9, Ch. 118, L. 1969; amd. Sec. 168, Ch. 350, L. 1974; R.C.M. 1947, 66-1821; amd. Sec. 1, Ch. 218, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 218 substituted (2) concerning completion of exams prior to issuance of a license for former list of examination requirements in accounting practice, accounting theory or auditing, or the holding of a treasury card for issuance of a license (see 1993 Session Law for text); and deleted former (3) that read: "(3) The examinations referred to in subsection (2) shall be those prescribed for subjects under 37-50-308 and shall be conducted and graded by the same standards as those given to candidates for certified public accountant." Amendment effective January 1, 1994.

Rulemaking: Section 2, Ch. 218, L. 1993, provided: "The department of commerce may adopt rules implementing [this act] to be in place on January 1, 1994." Effective March 29, 1993.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Duty of Department to administer and grade examinations, 37-1-101.

Licensing investigation and review — record access, 37-1-135.

37-50-305. Education requirements. (1) Prior to July 1, 1997, a candidate for certification as a certified public accountant or licensing as a licensed public accountant must have graduated from a college or university accredited to offer a baccalaureate degree:

(a) with a concentration in accounting; or

(b) with a concentration other than accounting if supplemented by experience or by related courses in other areas of business administration and the board determines that an equivalent education has been achieved.

(2) Beginning July 1, 1997, a candidate for certification as a certified public accountant or licensing as a licensed public accountant must have graduated from a college or university accredited to offer a baccalaureate degree:

(a) with an accounting concentration or its equivalent as determined by the board; and

(b) with at least 150 semester hours of credit, including those earned toward the baccalaureate degree or its equivalent.

History: En. Sec. 12, Ch. 118, L. 1969; R.C.M. 1947, 66-1824; amd. Sec. 10, Ch. 684, L. 1979; amd. Sec. 7, Ch. 335, L. 1983; amd. Sec. 3, Ch. 382, L. 1989.

Cross-References

Licensing investigation and review — record access, 37-1-135.

37-50-306. Repealed. Sec. 26, Ch. 684, L. 1979.

History: En. Sec. 13, Ch. 118, L. 1969; amd. Sec. 169, Ch. 350, L. 1974; R.C.M. 1947, 66-1825(1), (2), (4), (5).

37-50-307. Repealed. Sec. 26, Ch. 684, L. 1979.

History: En. Sec. 18, Ch. 118, L. 1969; amd. Sec. 171, Ch. 350, L. 1974; R.C.M. 1947, 66-1830.

37-50-308. Examination. Except as provided in 37-1-101(4), the department shall administer a written examination in accounting, auditing, and related subjects as the board determines appropriate. The grade determination of the board is final in each case. The board may use the examination and grading services of the American institute of certified public accountants. The examination must be held at least annually and at such other times as applications warrant. The board may determine the time and place of examination and may adopt rules necessary for the orderly conduct of the examination.

History: En. Sec. 6, Ch. 118, L. 1969; amd. Sec. 165, Ch. 350, L. 1974; R.C.M. 1947, 66-1818; amd. Sec. 20, Ch. 22, L. 1979; amd. Sec. 11, Ch. 684, L. 1979; amd. Sec. 8, Ch. 335, L. 1983.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

37-50-309. Credit for examinations taken in other states. The board may by rule provide for granting credit to a candidate for his satisfactory completion of a written examination in any one or more of the subjects of examination given by the licensing authority in another state. These rules shall include requirements the board determines appropriate in order that an examination approved as a basis for credit is, in the judgment of the board, at least as thorough as that included in the examination given in this state at the time the credit originally was granted by the other state for passing the examination.

History: En. Sec. 13, Ch. 118, L. 1969; amd. Sec. 169, Ch. 350, L. 1974; R.C.M. 1947, 66-1825(3); amd. Sec. 12, Ch. 684, L. 1979.

37-50-310. Existing certificates sufficient. Persons who, on July 1, 1969, held certified public accountant certificates heretofore issued under the laws of this state shall not be required to obtain additional certificates under this chapter but shall otherwise be subject to all provisions of this chapter. Such certificates heretofore issued shall, for all purposes, be considered certificates issued under this chapter and subject to the provisions hereof.

History: En. Sec. 15, Ch. 118, L. 1969; R.C.M. 1947, 66-1827(part).

37-50-311. Certified public accountants — waiver of examination for holders of foreign or out-of-state licenses, certificates, permits, or degrees. The board in its discretion may waive the examination and issue a certificate as a certified public accountant to any person otherwise eligible therefor who is the holder of a certificate, license, or permit as a certified public accountant, then in full force and effect, issued under the laws of any state or is the holder of a certificate, license, or degree in a foreign country constituting a recognized qualification for the practice of public accounting in such country, comparable to that of a certified public accountant in this state, which is then in full force and effect, where the requirements entitling him to practice as such certified public accountant were substantially equivalent to those in force in the state of Montana at the time the certificate was originally issued.

History: En. Sec. 15, Ch. 118, L. 1969; R.C.M. 1947, 66-1827(part); amd. Sec. 9, Ch. 335, L. 1983.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-50-312. Public accountants — waiver of examination for holders of out-of-state license. The board in its discretion may waive the examination and register as a licensed public accountant any person otherwise eligible therefor who is the holder of a license as a licensed public accountant, then in full force and effect, issued under the laws of any state or is the holder of a license or degree in a foreign country constituting a recognized qualification for the practice of public accounting in such country, comparable to that of a licensed public accountant in this state, which is then in full force and effect, where the requirements entitling him to practice as such licensed public accountant were substantially equivalent to those in force in the state of Montana at the time the license was originally issued.

History: En. Sec. 15, Ch. 118, L. 1969; R.C.M. 1947, 66-1827(part); amd. Sec. 10, Ch. 335, L. 1983.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-50-313. Registration of foreign accountants — restriction on title used. The board may in its discretion permit the registration of any person of good moral character who is the holder of a certificate, license, or degree in a foreign country constituting a recognized qualification for the practice of public accounting in such country. A person so registered shall use only the title under which he is generally known in his country, followed by the name of the country from which he received his certificate, license, or degree.

History: **En. Sec. 16, Ch. 118, L. 1969; R.C.M. 1947, 66-1828.**

37-50-314. Annual permit required — display. (1) No person may engage in the practice of public accounting in this state unless he holds a current annual permit issued by the department. An annual permit to engage in the practice of public accounting in this state shall be issued by the department to a person who holds a current certificate as a certified public accountant or license as a licensed public accountant and complies with the requirements of this chapter.

(2) After the expiration of the 3-year period immediately following the effective date of a board rule establishing continuing education requirements, each application for renewal of a permit by a person who has held his certificate or license for 3 years or more must be accompanied or supported by evidence satisfactory to the board of fulfillment of such requirements during the 3-year period immediately preceding the application.

(3) The board may in its discretion waive the requirement stated in subsection (2) if the applicant agrees to follow a particular program or schedule of continuing education agreeable to the board.

(4) The board may relax or suspend continuing education requirements for an applicant who certifies that he does not intend to engage in the practice of public accounting and for an applicant who cannot fulfill the requirement due to individual hardship.

(5) Subject to subsections (3) and (4), the board may revoke, suspend, or refuse to renew the permit of an applicant who fails to furnish evidence of having met the continuing education requirements established by the board.

(6) The current annual permit to engage in the practice of public accounting must be prominently displayed for public inspection.

History: **En. Sec. 21, Ch. 118, L. 1969; amd. Sec. 174, Ch. 350, L. 1974; R.C.M. 1947, 66-1833; amd. Sec. 13, Ch. 684, L. 1979; amd. Sec. 11, Ch. 335, L. 1983.**

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-50-315. Deposit of moneys collected. Fees and other moneys collected by the department under this chapter shall be deposited in the state special revenue fund for the use of the board.

History: **En. Sec. 4, Ch. 118, L. 1969; amd. Sec. 163, Ch. 350, L. 1974; R.C.M. 1947, 66-1816; amd. Sec. 14, Ch. 684, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.**

37-50-316. Other license fees prohibited. No certificate, permit, or license fees shall be imposed as a condition upon the practice of public accountancy other than those provided for in this chapter.

History: **En. Sec. 30, Ch. 118, L. 1969; R.C.M. 1947, 66-1842; amd. Sec. 12, Ch. 335, L. 1983.**

37-50-317. Certificate, license, and permit expiration — renewal fees. (1) Certificates, licenses, and permits issued by the board expire on December 31 of each year.

(2) Certificates and licenses must be renewed by the department upon payment of the annual renewal fee prescribed by the board.

(3) Permits must be renewed by the department upon payment of the annual renewal fee and upon compliance with the continuing education requirements prescribed by the board.

History: En. Sec. 13, Ch. 335, L. 1983.

37-50-318 through 37-50-320 reserved.

37-50-321. Revocation and suspension of certificate, license, or permit or refusal to renew permit — recovery of costs. (1) After notice and hearing as provided in 37-50-341, the board may revoke or may suspend any certificate issued under 37-50-302 or any license granted under 37-50-303 or may revoke, suspend, or refuse to renew any permit issued under 37-50-314 or may censure the holder of any such license for any one or any combination of the following causes:

(a) fraud or deceit in obtaining a certificate as certified public accountant or in obtaining a license to practice public accounting under this chapter;

(b) dishonesty, fraud, or gross negligence in the practice of public accounting;

(c) violation of any provisions of this chapter or rules of the board;

(d) conviction of a felony under the laws of any state or of the United States;

(e) conviction of any crime, an element of which is dishonesty or fraud, under the laws of any state or of the United States;

(f) cancellation, revocation, suspension, or refusal to renew authority to practice as a certified public accountant or a public accountant by any other state for any cause other than failure to pay an annual registration fee in such other state;

(g) suspension or revocation of the right to practice before any state or federal agency;

(h) failure to pay the renewal fees prescribed by the board.

(2) The board may, following a final determination resulting in any disciplinary action taken by the board under subsection (1), recover from the disciplined party all reasonable costs of any proceeding incurred for the purposes of that disciplinary action.

History: En. Sec. 22, Ch. 118, L. 1969; R.C.M. 1947, 66-1834; amd. Sec. 15, Ch. 684, L. 1979; amd. Sec. 14, Ch. 335, L. 1983.

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

37-50-322. Reinstatement of certificate, license, or permit to practice. On application in writing and after hearing pursuant to notice, the board may authorize the department to:

(1) issue a new certificate, license, or permit;

(2) reinstate a suspended or revoked certificate, license, or permit; or

(3) modify the terms of suspension of a certificate, license, or permit.

History: **En. Sec. 25, Ch. 118, L. 1969; amd. Sec. 176, Ch. 350, L. 1974; R.C.M. 1947, 66-1837; amd. Sec. 15, Ch. 335, L. 1983.**

37-50-323 through 37-50-330 reserved.

37-50-331. Partnership composed of certified public accountants — registration. (1) A partnership that is or plans to become engaged in this state in the practice of public accounting shall register with the department as a partnership of certified public accountants provided it meets the following requirements:

(a) Each partner or manager personally engaged in this state in the practice of public accounting must be a certified public accountant of some state in good standing and must be certified under this chapter.

(b) Each partner must be a certified public accountant of some state in good standing.

(2) Application for registration must be made on the affidavit of a general partner of the partnership who is a certified public accountant of this state in good standing. The board shall in each case determine whether the applicant is eligible for registration. A partnership which is registered may use the words "certified public accountants" or the abbreviation "CPAs" in connection with its partnership name. Notification shall be given the department within 1 month after the admission to or withdrawal of a partner from a partnership so registered.

History: **En. Sec. 17, Ch. 118, L. 1969; amd. Sec. 170, Ch. 350, L. 1974; R.C.M. 1947, 66-1829; amd. Sec. 16, Ch. 684, L. 1979.**

Cross-References

Affidavits, Title 26, ch. 1, part 10.

37-50-332. Corporation composed of certified public accountants — registration. (1) A professional service corporation organized for the practice of public accounting must register with the board as a corporation of certified public accountants provided it meets the following requirements:

(a) The sole purpose and business of the corporation must be to furnish to the public services not inconsistent with this chapter or the rules of the board, but the corporation may invest its funds in a manner not incompatible with the practice of public accounting.

(b) Each shareholder of the corporation must be a certified public accountant of some state in good standing and must be principally employed by the corporation or actively engaged in its business. No other person may have any interest in the stock of the corporation. The principal of the corporation and any officer or director having authority over the practice of public accounting by the corporation must be certified public accountants of some state in good standing.

(c) Each shareholder, officer, or manager of the corporation personally engaged within this state in the practice of public accounting as a member thereof must be a certified public accountant of some state in good standing and must be certified under this chapter.

(2) Application for such registration must be made upon the affidavit of a shareholder who holds a permit to practice in this state as a certified public accountant. The board shall determine whether the applicant is eligible for registration. A corporation which is so registered may use the words "certified

public accountant" or the abbreviation "CPA" in connection with its corporation name. Notification shall be given the board within 1 month after the admission or withdrawal of a shareholder of a corporation so registered.

History: En. 66-1829.1 by Sec. 1, Ch. 207, L. 1974; amd. Sec. 11, Ch. 101, L. 1977; R.C.M. 1947, 66-1829.1; amd. Sec. 17, Ch. 684, L. 1979.

Cross-References

Professional service corporations, Title 35, ch. 4.

37-50-333. Partnership composed of public accountants — registration. (1) A partnership engaged in this state in the practice of public accounting must register with the department as a partnership of licensed public accountants, provided it meets the following requirements:

(a) At least one general partner must be a certified public accountant or a licensed public accountant of this state in good standing and a holder of a permit issued under 37-50-314 which is in effect.

(b) Each partner personally engaged in this state in the practice of public accounting must be a certified public accountant or a licensed public accountant of this state in good standing and a holder of a permit issued under 37-50-314 which is in effect.

(c) Each local manager in charge of an office or a firm in this state must be a certified public accountant or a licensed public accountant of this state in good standing and a holder of a permit issued under 37-50-314 which is in effect.

(2) Application for registration must be made on the affidavit of a general partner of the partnership who holds a permit to practice in this state as a certified public accountant or as a licensed public accountant. The board shall in each case determine whether the applicant is eligible for registration. A partnership which is registered may use the words "public accountants" in connection with its partnership name. Notification shall be given the department within 1 month after the admission to or withdrawal of a partner from a partnership so registered.

History: En. Sec. 19, Ch. 118, L. 1969; amd. Sec. 172, Ch. 350, L. 1974; R.C.M. 1947, 66-1831; amd. Sec. 18, Ch. 684, L. 1979; amd. Sec. 16, Ch. 335, L. 1983.

Cross-References

Affidavits, Title 26, ch. 1, part 10.

Partnerships, Title 35, ch. 10.

37-50-334. Corporation composed of public accountants — registration. (1) A professional service corporation organized for the practice of public accounting must register with the board as a corporation of public accountants, provided it meets the following requirements:

(a) The sole purpose and business of the corporation must be to furnish to the public services not inconsistent with this chapter or the rules of the board, but the corporation may invest its funds in a manner not incompatible with the practice of public accounting.

(b) At least one shareholder thereof must be a certified public accountant or public accountant of this state in good standing and must hold a permit issued under 37-50-314 which is in effect.

(c) Each shareholder of the corporation must be a certified public accountant or a licensed public accountant of some state, in good standing, and must be principally employed by the corporation or actively engaged in its business.

No other person may have any interest in the stock of the corporation. The principal of the corporation and any officer or director having authority over the practice of public accounting by the corporation must be certified public accountants or public accountants of some state in good standing.

(d) Each shareholder of the corporation personally engaged within this state in the practice of public accounting as a member thereof must be a certified public accountant or a licensed public accountant of this state in good standing and must hold a permit issued under 37-50-314 which is in effect.

(e) In order to facilitate compliance with the provisions of this section relating to the ownership of stock, there must be a written agreement binding the corporation or the qualified shareholders to purchase any shares offered for sale by or not under the ownership or effective control of a qualified shareholder and binding any shareholder not a qualified shareholder to sell such shares to the corporation or the qualified shareholders. The agreement must be noticed on each certificate of corporate stock.

(2) Application for such registration must be made upon the affidavit of a shareholder who holds a permit to practice in this state as a certified public accountant or licensed public accountant. The board shall determine whether the applicant is eligible for registration. A corporation which is so registered may use the words "public accountant" or the abbreviation "PA" in connection with its corporation name. Notification shall be given the board within 1 month after the admission or withdrawal of a shareholder of a corporation so registered.

History: En. 66-1831.1 by Sec. 2, Ch. 207, L. 1974; amd. Sec. 12, Ch. 101, L. 1977; R.C.M. 1947, 66-1831.1; amd. Sec. 19, Ch. 684, L. 1979; amd. Sec. 17, Ch. 335, L. 1983.

Cross-References

Affidavits, Title 26, ch. 1, part 10.

Professional service corporations, Title 35, ch. 4.

37-50-335. Registration of offices. Each office established or maintained in this state for the practice of public accounting in this state by a certified public accountant or a partnership or corporation of certified public accountants or by a licensed public accountant or a partnership or corporation of licensed public accountants or by one registered under 37-50-313 shall be registered annually with the department. A fee may not be charged for this registration. In addition, each individual engaged in this state in the practice of public accounting must have annually received a permit under 37-50-314.

History: En. Sec. 20, Ch. 118, L. 1969; amd. Sec. 3, Ch. 207, L. 1974; amd. Sec. 173, Ch. 350, L. 1974; amd. Sec. 13, Ch. 101, L. 1977; R.C.M. 1947, 66-1832; amd. Sec. 20, Ch. 684, L. 1979; amd. Sec. 18, Ch. 335, L. 1983.

37-50-336. Revocation or suspension of partnership or corporation registration. After notice and hearing as provided in 37-50-341, the board shall revoke the registration of a partnership or corporation if at any time it does not have all the qualifications prescribed by the section of this chapter under which it qualified for registration.

History: En. Sec. 23, Ch. 118, L. 1969; amd. Sec. 4, Ch. 207, L. 1974; R.C.M. 1947, 66-1835.

Cross-References

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

37-50-337 through 37-50-340 reserved.

37-50-341. Initiation of proceedings — hearings and rulemaking. (1) The board may initiate proceedings under this chapter either on its own motion or on the complaint of a person.

(2) Hearings and rulemaking proceedings shall be governed in all respects by the Montana Administrative Procedure Act.

History: En. Sec. 24, Ch. 118, L. 1969; amd. Sec. 175, Ch. 350, L. 1974; R.C.M. 1947, 66-1836.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

37-50-342. Violation. Any person who violates any provision of this chapter or the rules of the board is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500, by imprisonment in the county jail for not more than 6 months, or by both such fine and imprisonment.

History: En. Sec. 28, Ch. 118, L. 1969; R.C.M. 1947, 66-1840; amd. Sec. 19, Ch. 335, L. 1983.

Part 4

Miscellaneous Provisions

37-50-401. False statements by accountants — misdemeanor — penalty. Any person practicing as an accountant, public accountant, auditor, or certified public accountant in this state who, because of negligence, gross inefficiency, or willfulness, shall issue or permit the issuance of any false statement of the financial transactions, standing, or condition of any corporation, partnership, or individual business undertaking shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than $500 or more than $2,000 or imprisoned for a period of not less than 90 days or more than 1 year or subjected to both said fine and imprisonment, in the discretion of the court.

History: En. Sec. 8, Ch. 46, L. 1933; re-en. Sec. 3241.8, R.C.M. 1935; R.C.M. 1947, 66-1808.

37-50-402. Privileged communications — exceptions. (1) Except by permission of the client, person, firm, or corporation engaging a certified or licensed public accountant or an employee of the accountant or by permission of the heirs, successors, or personal representatives of the client, person, firm, or corporation and except for the expression of opinions on financial statements, a certified public accountant, licensed public accountant, or employee thereof may not be required to disclose or divulge or voluntarily disclose or divulge information that the certified or licensed accountant or an employee may have relative to and in connection with any professional services as a public accountant. The information derived from or as a result of professional services is considered confidential and privileged.

(2) The provisions of this section do not apply to the testimony or documents of a public accountant furnished pursuant to a subpoena in a court of competent jurisdiction, pursuant to a board proceeding, or in the process of any board-approved practice review program.

History: En. Sec. 29, Ch. 118, L. 1969; R.C.M. 1947, 66-1841; amd. Sec. 20, Ch. 335, L. 1983; amd. Sec. 1, Ch. 82, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 82 at end of (2) inserted "or in the process of any board-approved practice review program"; and made minor changes in style.

Cross-References

Evidence — privileges, Title 26, ch. 1, part 8.

37-50-403. Nonliability — evidential privilege — application to nonprofit corporations. (1) A member of a peer review, professional standards review, or ethics review committee of a society composed of persons licensed to practice the accounting profession is not liable in damages to any person for any action taken or recommendation made within the scope of the functions of the committee if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to him after reasonable effort to obtain the facts.

(2) The proceedings and records of peer review, professional standards review, and ethics review committees are not subject to discovery or introduction into evidence in any proceeding. However, information otherwise discoverable or admissible from an original source is not to be construed as immune from discovery or use in any proceeding merely because it was presented during proceedings before the committee, nor is a member of the committee or other person appearing before it to be prevented from testifying as to matters within his knowledge; however, he may not be questioned about his testimony or other proceedings before the committee or about opinions or other actions of the committee or any member of the committee.

(3) This section also applies to any member, agent, or employee of a nonprofit corporation engaged in performing the functions of a peer review, professional standards review, or ethics review committee with respect to the profession of accounting.

History: En. Sec. 1, Ch. 197, L. 1991.

CHAPTER 51

REAL ESTATE BROKERS AND SALESMEN

Part 1 — General

37-51-101. Repealed.
37-51-102. Definitions.
37-51-103. Exemptions.
37-51-104. Chapter supplemental to deceptive practices law.

Part 2 — Board of Realty Regulation

37-51-201. Chairman — seal — records — prohibition on membership in real estate associations.
37-51-202. General licensing power.
37-51-203. Rulemaking power.
37-51-204. Educational programs and continuing education.
37-51-205. Compensation of members — expenses.
37-51-206. Attorney general to act as attorney for the board.
37-51-207. Schedule of fees.
37-51-208. Deposit of money not otherwise provided for.
37-51-209. Executive secretary — hiring, duties, and qualifications.

Part 3 — Licensing

37-51-301. License required — limited to persons.
37-51-302. Broker or salesman license — qualifications of applicant.
37-51-303. Broker or salesman examination.
37-51-304. Repealed.
37-51-305. License — form — delivery — display — pocket card.
37-51-306. Transactions with nonresidents and with nonlicensed brokers or salesmen — reciprocity — consent to legal process.
37-51-307. Directory of licensees.
37-51-308. Broker's office — notice to department of change of address.
37-51-309. Broker owner — broker associate — salesman — notice to department of change of association.
37-51-310. Annual renewal.
37-51-311. Fees — deposit of fees.
37-51-312. No taxation by municipality.
37-51-313 through 37-51-320 reserved.
37-51-321. Revocation or suspension of license — initiation of proceedings — grounds.
37-51-322. Right to notice and hearing.
37-51-323. Penalties — criminal — civil.

Part 4 — Miscellaneous Provisions

37-51-401. Action for compensation limited to licensed broker or salesman.

Part 5 — Recovery Account

37-51-501. Real estate recovery account established — minimum balance — interest.
37-51-502. Initial licensure and additional assessment.
37-51-503. Claims against fund — orders for payment.
37-51-504. Form of application.
37-51-505. Motion to dismiss application.
37-51-506. Hearing on application.
37-51-507. Payment from account.
37-51-508. Limitation of payment — pro rata distribution.
37-51-509. Claims satisfied in order of filing.
37-51-510. Deposits by board.
37-51-511. Subrogation rights of board.
37-51-512. Other disciplinary powers unimpaired — effect of repayment to fund.

Part 6 — Licensure of Property Managers

37-51-601. License required to manage property.
37-51-602. Definition of property management — exemptions from application.
37-51-603. Qualification of property manager applicants — examination — form of licenses.
37-51-604. Annual renewal — continuing education — fees.
37-51-605. Property manager's office — notice of change of address.
37-51-606. Revocation, suspension, or denial of license — initiation of proceedings — grounds.
37-51-607. Transactions with nonlicensed persons unlawful — action for compensation limited to licensees.
37-51-608. Penalties — criminal — civil.

Chapter Cross-References

Licensed broker — exemption from regulation of escrow business, 32-7-103.

Part 1

General

37-51-101. Repealed. Sec. 14, Ch. 497, L. 1979.

History: En. Sec. 1, Ch. 250, L. 1963; amd. Sec. 1, Ch. 261, L. 1969; amd. Sec. 177, Ch. 350, L. 1974; R.C.M. 1947, 66-1924(1).

37-51-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Account" means the real estate recovery account established in 37-51-501.

(2) "Board" means the board of realty regulation provided for in 2-15-1867.

(3) "Broker" includes an individual who:

(a) for another or for valuable consideration or who with the intent or expectation of receiving valuable consideration negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements on real estate or collects rents or attempts to collect rents;

(b) is employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing, subleasing, or other disposition of real estate for consideration;

(c) engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract by which the individual undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers;

(d) makes the advertising, sale, lease, or other real estate information available by public display to potential buyers and who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(e) aids or attempts or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(f) receives a fee, commission, or other compensation for referring to a licensed broker or salesman the name of a prospective buyer or seller of real property; or

(g) advertises or represents to the public that the individual is engaged in any of the activities referred to in subsections (3)(a) through (3)(f).

(4) "Broker associate" means a broker who associates with a broker owner and does not own an interest in a real estate firm.

(5) "Broker owner" means a broker who owns or has a financial interest in a real estate firm.

(6) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(7) "Franchise agreement" means a contract or agreement by which:

(a) a franchisee is granted the right to engage in business under a marketing plan prescribed in substantial part by the franchisor;

(b) the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

(c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the agreement.

(8) "Person" includes individuals, partnerships, associations, and corporations, foreign and domestic, except that when referring to a person licensed under this chapter, it means an individual.

(9) "Property manager" includes a person who for a salary, commission, or compensation of any kind engages in the business of leasing, renting, subleasing, or other transfer of possession of real estate belonging to others without transfer of the title to the property, pursuant to 37-51-601 and 37-51-602.

(10) "Real estate" includes leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

(11) "Salesman" includes an individual who for a salary, commission, or compensation of any kind is associated, either directly, indirectly, regularly, or occasionally, with a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

History: En. Sec. 2, Ch. 250, L. 1963; amd. Sec. 2, Ch. 261, L. 1969; amd. Sec. 178, Ch. 350, L. 1974; amd. Sec. 1, Ch. 133, L. 1975; R.C.M. 1947, 66-1925; amd. Sec. 1, Ch. 188, L. 1979; amd. Sec. 1, Ch. 306, L. 1979; amd. Sec. 3, Ch. 497, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 688, L. 1985; amd. Sec. 1, Ch. 314, L. 1989; amd. Sec. 1, Ch. 125, L. 1991; amd. Sec. 1, Ch. 142, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 142 inserted definition of property manager; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Real property defined, 70-15-101.

37-51-103. Exemptions. (1) An act performed for compensation of any kind in the buying, selling, exchanging, leasing, or renting of real estate or in negotiating therefor for others, except as specified in this section, shall constitute the person performing any of the acts a real estate broker or real estate salesman. The provisions of this chapter may not:

(a) apply to any person who, as owner or lessor, shall perform any acts listed in subsection (1) with reference to property owned or leased by himself or to an auctioneer employed by the owner or lessor to aid and assist in conducting a public sale held by the owner or lessor;

(b) apply to any person acting as attorney-in-fact under a duly executed special or general power of attorney from the owner of any real estate authorizing the purchase, sale, exchange, renting, or leasing of any real estate, unless the person acting as attorney-in-fact does so regularly or consistently for a person or persons, for or with the expectation of receiving a fee, commission, or other valuable consideration in conjunction with a business or for the purpose of avoiding license requirements;

(c) be construed to include in any way the services rendered by any attorney at law in the performance of his duty as an attorney at law;

(d) apply to any person duly appointed by a court for purpose of evaluation or appraising an estate in a probate matter;

(e) be held to include, while acting as such, a receiver, a trustee in bankruptcy, an administrator or executor, any person selling real estate under order of any court, a trustee under a trust agreement, deed of trust, or will, or an auctioneer employed by a receiver, trustee in bankruptcy, administrator, executor, or trustee to aid and assist in conducting a public sale held by the officer;

(f) apply to public officials in the conduct of their official duties;

(g) apply to any person, partnership, association, or corporation, foreign or domestic, performing any act with respect to prospecting, leasing, drilling, or operating land for hydrocarbons and hard minerals or disposing of any hydrocarbons, hard minerals, or mining rights therein, whether upon a royalty basis or otherwise; or

(h) apply to persons acting as managers of housing complexes for low-income persons, which are subsidized, directly or indirectly, by this state or an agency or subdivision thereof or by the government of the United States or an agency thereof.

(2) The provisions of this chapter do not apply to a newspaper or other publication of general circulation or to a radio or television station engaged in the normal course of business.

History: En. Sec. 3, Ch. 250, L. 1963; amd. Sec. 1, Ch. 385, L. 1977; R.C.M. 1947, 66-1926; amd. Sec. 1, Ch. 180, L. 1989; amd. Sec. 2, Ch. 314, L. 1989.

37-51-104. Chapter supplemental to deceptive practices law. Nothing contained herein may be construed to amend or modify 45-6-317 or 45-6-318. This chapter shall be construed to be supplemental to 45-6-317 and 45-6-318.

History: En. Sec. 25, Ch. 250, L. 1963; amd. Sec. 16, Ch. 101, L. 1977; R.C.M. 1947, 66-1946.

Part 2

Board of Realty Regulation

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1867.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-51-201. Chairman — seal — records — prohibition on membership in real estate associations. (1) The members of the board shall elect a chairman from among their number.

(2) The board shall adopt a seal of a design as it shall prescribe. Copies of records and papers kept by the department, certified by the chairman and authenticated by the seal of the board, shall be received in evidence in courts with like effect as the original. Records of the board are open to public inspection under rules it prescribes.

(3) The department shall keep a record of proceedings, transactions, communications, and official acts of the board; be custodian of the records of the board; and cause to be performed other duties as the board, on the written request of two or more members of the board or at other times as the chairman in his discretion, considers necessary.

(4) Neither the chairman nor an employee of the department hired to provide services to the board may be an officer or paid employee of any real estate association or group of real estate dealers or brokers.

History: (1)En. 66-1927.1 by Sec. 2, Ch. 378, L. 1977; Sec. 66-1927.1, R.C.M. 1947; (2) thru (4)En. Sec. 4, Ch. 250, L. 1963; amd. Sec. 179, Ch. 350, L. 1974; amd. Sec. 36, Ch. 439, L. 1975; Sec. 66-1927, R.C.M. 1947; R.C.M. 1947, 66-1927(2), (4), 66-1927.1.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Public records, Title 2, ch. 6.

Entries in official books and records prima facie evidence, 26-1-605.

Entry made by officer or Board prima facie evidence, 26-1-606.

Requirement of authentication or identification, Rule 901, M.R.Ev. (see Title 26, ch. 10).

Self-authentication, Rule 902, M.R.Ev. (see Title 26, ch. 10).

Public records, Rule 1005, M.R.Ev. (see Title 26, ch. 10).

Duties of Department, 37-1-101.

37-51-202. General licensing power. The board may regulate the issuance of licenses and revoke or suspend licenses issued under this chapter.

History: En. Sec. 8, Ch. 250, L. 1963; amd. Sec. 182, Ch. 350, L. 1974; R.C.M. 1947, 66-1931.

37-51-203. Rulemaking power. The board shall from time to time adopt rules to carry out the provisions of this chapter.

History: En. Sec. 4, Ch. 250, L. 1963; amd. Sec. 179, Ch. 350, L. 1974; amd. Sec. 36, Ch. 439, L. 1975; R.C.M. 1947, 66-1927(1).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-51-204. Educational programs and continuing education. (1) The board may, subject to 37-1-101, conduct, hold, or assist in conducting or holding real estate clinics, meetings, courses, or institutes and incur necessary expenses in this connection.

(2) The board may assist libraries and educational institutions in sponsoring studies and programs for the purpose of raising the standards of the real estate business and the competency of licensees.

(3) The board may prescribe by rule continuing education requirements for all licensees, not to exceed 15 classroom or equivalent hours in any 2-year period, including proof of conformance, but except as provided in 37-51-302 the board may not require examination of licensees.

History: En. Sec. 20, Ch. 250, L. 1963; amd. Sec. 190, Ch. 350, L. 1974; R.C.M. 1947, 66-1943; amd. Sec. 1, Ch. 269, L. 1985.

37-51-205. Compensation of members — expenses. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 4, Ch. 250, L. 1963; amd. Sec. 179, Ch. 350, L. 1974; amd. Sec. 36, Ch. 439, L. 1975; R.C.M. 1947, 66-1927(3); amd. Sec. 4, Ch. 497, L. 1979; amd. Sec. 29, Ch. 474, L. 1981.

37-51-206. Attorney general to act as attorney for the board. The attorney general shall act as attorney for the board in actions and proceedings brought by or against it under this chapter. Fees and expenses of the attorney general acting in this capacity shall be paid out of board moneys in the state special revenue fund.

History: En. Sec. 21, Ch. 250, L. 1963; amd. Sec. 191, Ch. 350, L. 1974; R.C.M. 1947, 66-1944; amd. Sec. 1, Ch. 277, L. 1983.

Cross-References

Duties of Attorney General, 2-15-501.

37-51-207. Schedule of fees. The board shall adopt a schedule of fees to be charged by the department and to be paid into the state special revenue fund for the use of the board. The fees charged must be reasonably related to the cost incurred in regulating the real estate industry.

History: **En. Sec. 5, Ch. 497, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-51-208. Deposit of money not otherwise provided for. Whenever money is received by the board or by the department for the use of the board and there is no provision for the disposition or deposit of the money, the money is to be deposited in the state special revenue fund for the use of the board.

History: **En. Sec. 1, Ch. 515, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.**

37-51-209. Executive secretary — hiring, duties, and qualifications. (1) The department of commerce may hire an executive secretary to carry out duties prescribed by the board pursuant to the board's responsibilities and duties established by law.

(2) The person hired to be executive secretary:

(a) shall possess at least a bachelor's degree from an accredited college or university;

(b) may not be an officer or paid employee of a real estate association or group of real estate dealers or brokers;

(c) must be a citizen of the United States of America; and

(d) must be of good moral character.

History: **En. Sec. 1, Ch. 270, L. 1991.**

Part 3
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-51-301. License required — limited to persons. (1) It is unlawful for a person to engage in or conduct, directly or indirectly, or to advertise or hold himself out as engaging in or conducting the business or acting in the capacity of a real estate broker or a real estate salesman within this state without a license as a broker or salesman or otherwise complying with this chapter.

(2) Corporations, partnerships, and associations may not be licensed under this chapter. A corporation or a partnership may act as a licensee if every corporate officer and every partner performing the functions of a licensee is licensed under this chapter. All officers of a corporation or all members of a partnership acting as a licensee are in violation of this chapter unless there is full compliance with this subsection.

History: **En. Sec. 1, Ch. 250, L. 1963; amd. Sec. 1, Ch. 261, L. 1969; amd. Sec. 177, Ch. 350, L. 1974; R.C.M. 1947, 66-1924(2), (3); amd. Sec. 93, Ch. 370, L. 1987; amd. Sec. 1, Ch. 259, L. 1989.**

Cross-References

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

37-51-302. Broker or salesman license — qualifications of applicant. (1) Licenses may be granted only to individuals considered by the board to be of good repute and competent to transact the business of a broker or salesman in a manner as to safeguard the interests of the public.

(2) An applicant for a broker's license shall:

(a) be at least 18 years of age;

(b) have graduated from an accredited high school or completed an equivalent education as determined by the board;

(c) have been actively engaged as a licensed real estate salesman for a period of 2 years or have had experience or special education equivalent to that which a licensed real estate salesman ordinarily would receive during this 2-year period as determined by the board, except that if the board finds that an applicant could not obtain employment as a licensed real estate salesman because of conditions existing in the area where he resides, the board may waive this experience requirement;

(d) file an application for license with the department; and

(e) furnish written evidence that he has completed 60 classroom or equivalent hours (in addition to those required to secure a salesman's license) in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law, real estate finance, and related topics.

(3) The board shall require information it considers necessary from an applicant to determine his honesty, trustworthiness, and competency.

(4) (a) An applicant for a salesman's license shall:

(i) be at least 18 years of age;

(ii) have received credit for completion of 2 years of full curriculum study at an accredited high school or completed an equivalent education as determined by the board;

(iii) file an application for license with the department; and

(iv) furnish written evidence that he has completed 60 classroom or equivalent hours in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law and ethics, real estate finance, and related topics.

(b) His application shall be accompanied by the recommendation of the licensed broker by whom the applicant will be employed or placed under contract, certifying that the applicant is of good repute and that the broker will actively supervise and train the applicant during the period the requested license remains in effect.

(5) The department shall issue to each licensed broker and to each licensed salesman a license and a pocket card in a form and size as the board prescribes.

(6) A broker's license must indicate whether the broker is a broker owner or a broker associate.

History: En. Sec. 6, Ch. 250, L. 1963; amd. Sec. 3, Ch. 261, L. 1969; amd. Sec. 10, Ch. 423, L. 1971; amd. Sec. 180, Ch. 350, L. 1974; R.C.M. 1947, 66-1929; amd. Sec. 2, Ch. 306, L. 1979; amd. Sec. 7, Ch. 341, L. 1981; amd. Sec. 2, Ch. 269, L. 1985.

Cross-References

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-51-303. Broker or salesman examination. (1) In addition to proof of honesty, trustworthiness, and good reputation, an applicant whose application is then pending shall satisfactorily pass a written examination prepared by or under the supervision of the board. The examination shall be given at least once each 6 months and at places within the state the board prescribes.

(2) (a) The examination for a salesman's license shall include:

(i) business ethics, writing, composition, arithmetic, elementary principles of land economics and appraisal;

(ii) a general knowledge of the statutes of this state relating to deeds, mortgages, contracts of sale, agency, brokerage, and of this chapter.

(b) If the applicant passes one subject portion of the examination, (2)(a)(i) or (2)(a)(ii), he shall not be required to repeat that portion of the examination if he passes the remaining portion within 12 months.

(3) The examination for a broker's license shall be of a more exacting nature and scope and more stringent than the examination for a salesman's license.

History: En. Sec. 7, Ch. 250, L. 1963; amd. Sec. 181, Ch. 350, L. 1974; R.C.M. 1947, 66-1930; amd. Sec. 1, Ch. 595, L. 1981.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

37-51-304. Repealed. Sec. 15, Ch. 688, L. 1985.

History: En. Sec. 10, Ch. 250, L. 1963; amd. Sec. 4, Ch. 261, L. 1969; amd. Sec. 184, Ch. 350, L. 1974; amd. Sec. 15, Ch. 101, L. 1977; R.C.M. 1947, 66-1933.

37-51-305. License — form — delivery — display — pocket card. (1) The board shall prescribe the form of license. A license shall bear the seal of the board.

(2) The license of a real estate salesman shall be delivered or mailed to the real estate broker with whom the real estate salesman is associated and shall be kept in the custody and control of the broker.

(3) A broker shall display his own license conspicuously in his place of business.

(4) The department shall annually prepare and deliver a pocket card certifying that the person whose name appears is a registered real estate broker or a registered real estate salesman, stating the period for which fees have been paid and, on real estate salesman's cards only, the name and address of the broker with whom he is associated.

History: En. Sec. 9, Ch. 250, L. 1963; amd. Sec. 183, Ch. 350, L. 1974; R.C.M. 1947, 66-1932; amd. Sec. 3, Ch. 306, L. 1979.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Jurisdiction of persons, Rule 4B, M.R.Civ.P. (see Title 25, ch. 20).

37-51-306. Transactions with nonresidents and with nonlicensed brokers or salesmen — reciprocity — consent to legal process. (1) A licensed broker may not employ or compensate, directly or indirectly, a person for performing the acts regulated by this chapter who is not a licensed broker or licensed salesman. However, a licensed broker may pay a commission to a licensed broker of another state if the nonresident broker has not conducted and does not conduct in this state a service for which a fee, compensation, or commission is paid. This subsection does not limit the next subsection.

(2) A person who is licensed as a broker or a salesman in another state may obtain a license as a broker or as a salesman in this state by complying with this chapter and with the rules of the board. However, this section applies only to licensees of other states that offer the same privileges to the licensees of this state. A nonresident licensee need not maintain a place of business in this state. The board may:

(a) authorize the department to license a nonresident without examination if he files with the department an authorized or certified copy of the license issued in another state and pays to the department the same license fee as is required for obtaining a license in this state;

(b) refuse to authorize the department to issue a license to an applicant who is not a resident of this state; and

(c) enter into reciprocal agreements with other states.

(3) A nonresident licensee shall file an irrevocable written consent that legal actions arising out of a commenced or completed transaction may be commenced against the nonresident licensee in a county of this state that may be appropriate and designated by Title 25, chapter 2, part 1. The consent must provide that service of summons in this action may be served on the department for and on behalf of the nonresident licensee, and this service is sufficient to give the court jurisdiction over the licensee conducting a transaction in a county. The consent must be acknowledged and, if made by a corporation, must be authenticated by its seal.

History: En. Sec. 13, Ch. 250, L. 1963; amd. Sec. 187, Ch. 350, L. 1974; R.C.M. 1947, 66-1936; amd. Sec. 1, Ch. 11, L. 1991.

Cross-References

Rules for determining residency, 1-1-215.

Prohibition on distribution or sale of mailing lists, 2-6-109.

37-51-307. Directory of licensees. The department shall annually publish a directory of licensees, including a list of licenses suspended and revoked, which shall contain such other data the board determines to be in the interest of real estate licensees and the public.

History: En. Sec. 22, Ch. 250, L. 1963; amd. Sec. 192, Ch. 350, L. 1974; R.C.M. 1947, 66-1945.

Cross-References

Prohibition on distribution or sale of mailing lists, 2-6-109.

37-51-308. Broker's office — notice to department of change of address. (1) A resident licensed broker shall maintain a fixed office in this state. The original license of the broker and the original license of each salesman associated or under contract with the broker shall be prominently displayed in the office. The address of the office and any branch office shall be designated on the broker's license.

(2) In case of removal from the designated address, the licensee shall notify the department before removal or within 10 days thereafter, designat-

ing the new location of this office and paying the required fee, whereupon a license for the new location must be issued for the unexpired period.

History: En. Sec. 12, Ch. 250, L. 1963; amd. Sec. 186, Ch. 350, L. 1974; R.C.M. 1947, 66-1935(1); amd. Sec. 21, Ch. 22, L. 1979; amd. Sec. 4, Ch. 306, L. 1979.

37-51-309. Broker owner — broker associate — salesman — notice to department of change of association. (1) A salesman may not be associated with or under contract to more than one licensed broker owner, nor may he perform services for a broker other than the one designated on the license issued to the salesman.

(2) When a licensed salesman desires to change his association or contractual relationship from one licensed broker to another, he shall notify the department promptly in writing of these facts, pay the required fee, and return his license and pocket card, and a new license and pocket card shall be issued. No salesman shall directly or indirectly work for or with a broker owner until he has been issued a license to work for or with that broker owner. On termination of a salesman's association or contractual relationship, he shall surrender his license and pocket card to his broker owner who shall return them to the department for cancellation.

(3) Only one license shall be issued to a salesman to be in effect at one time.

(4) A broker associate may not be associated with more than one broker owner.

History: En. Sec. 12, Ch. 250, L. 1963; amd. Sec. 186, Ch. 350, L. 1974; R.C.M. 1947, 66-1935(2), (3); amd. Sec. 5, Ch. 306, L. 1979.

37-51-310. Annual renewal. (1) Except as provided in subsection (2), annual fees are due and payable for the ensuing year during the month of December of each year. Failure to remit annual fees before January 1 automatically cancels the license, but otherwise the license remains in effect continuously from the date of issuance unless suspended or revoked by the board for just cause.

(2) The board may by rule change the annual renewal and automatic cancellation dates provided for in subsection (1).

(3) A licensee who allows his license to lapse by failing to remit the annual fees before January 1 may have his license reinstated by the board by:

(a) within 45 days after January 1, providing a satisfactory explanation to the board for his failure to renew the license; and

(b) paying the current renewal fee prescribed by the board.

(4) The board may also charge a late fee equal to twice the current renewal fee, but no less than $100, to a licensee who does not renew his license as required by subsection (1).

History: En. Sec. 11, Ch. 250, L. 1963; amd. Sec. 185, Ch. 350, L. 1974; amd. Sec. 13, Ch. 533, L. 1977; R.C.M. 1947, 66-1934(3); amd. Sec. 1, Ch. 275, L. 1985; amd. Sec. 1, Ch. 306, L. 1987.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-51-311. Fees — deposit of fees. (1) The fees prescribed by the board shall be charged by the department and paid into the state special revenue fund for the use of the board, subject to 37-1-101(6).

(2) The board shall charge an annual fee from a licensee who wishes to be placed in an inactive status. A licensee who is placed in an inactive status by the board and who has paid the required fee need not pay any fee assessed by the board for the purpose of funding the real estate recovery account during the period the licensee remains in inactive status.

History: En. Sec. 11, Ch. 250, L. 1963; amd. Sec. 185, Ch. 350, L. 1974; amd. Sec. 13, Ch. 533, L. 1977; R.C.M. 1947, 66-1934(1), (2); amd. Sec. 6, Ch. 306, L. 1979; amd. Sec. 65, Ch. 345, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 688, L. 1985.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Recovery account assessment fee, 37-51-502.

37-51-312. No taxation by municipality. No license fee or tax may be imposed on a real estate broker or salesman by a municipality or any other political subdivision of the state.

History: En. Sec. 11, Ch. 250, L. 1963; amd. Sec. 185, Ch. 350, L. 1974; amd. Sec. 13, Ch. 533, L. 1977; R.C.M. 1947, 66-1934(4).

37-51-313 through 37-51-320 reserved.

37-51-321. Revocation or suspension of license — initiation of proceedings — grounds. (1) The board may on its own motion and shall on the sworn complaint in writing of a person investigate the actions of a real estate broker or a real estate salesperson, subject to 37-1-101 and 37-1-121, and may revoke or suspend a license issued under this chapter when the broker or salesperson has been found guilty by a majority of the board of any of the following practices:

(a) intentionally misleading, untruthful, or inaccurate advertising, whether printed or by radio, display, or other nature, which advertising in any material particular or in any material way misrepresents any property, terms, values, policies, or services of the business conducted. A broker who operates under a franchise agreement engages in misleading, untruthful, or inaccurate advertising if in using the franchise name the broker does not incorporate the broker's own name in the franchise name or logotype or does not conspicuously display, on the broker's letterhead and other printed materials available to the public, a statement that the broker's office is independently owned and operated and the trade name, if any, by which the office is known. The board may not adopt advertising standards more stringent than those set forth in this subsection.

(b) making any false promises of a character likely to influence, persuade, or induce;

(c) pursuing a continued and flagrant course of misrepresentation or making false promises through agents or salespersons or any medium of advertising or otherwise;

(d) use of the term "realtor" by a person not authorized to do so or using another trade name or insignia of membership in a real estate organization of which the licensee is not a member;

(e) failing to account for or to remit money coming into the broker's or salesperson's possession belonging to others;

(f) accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures made for a principal;

(g) acting in a dual capacity of broker and undisclosed principal in a transaction, including failing to disclose in advertisements for real property the person's dual capacity as broker and principal;

(h) guaranteeing, authorizing, or permitting a person to guarantee future profits which may result from the resale of real property;

(i) offering real property for sale or lease without the knowledge and consent of the owner or the owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized agent;

(j) inducing a party to a contract of sale or lease to break the contract for the purpose of substituting a new contract with another principal;

(k) accepting employment or compensation for appraising real property contingent on the reporting of a predetermined value or issuing an appraisal report on real property in which the broker or salesperson has an undisclosed interest;

(l) negotiating a sale, exchange, or lease of real property directly with an owner or lessee if the broker or salesperson knows that the owner has a written, outstanding contract in connection with the property granting an exclusive agency to another broker;

(m) soliciting, selling, or offering for sale real property by conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real property;

(n) representing or attempting to represent a real estate broker other than the employer without the express knowledge or consent of the employer;

(o) failing voluntarily to furnish a copy of a written instrument to a party executing it at the time of its execution;

(p) paying a commission in connection with a real estate sale or transaction to a person who is not licensed as a real estate broker or real estate salesperson under this chapter;

(q) intentionally violating a rule adopted by the board in the interests of the public and in conformity with this chapter;

(r) failing, if a salesperson, to place, as soon after receipt as is practicably possible, in the custody of the salesperson's registered broker, deposit money or other money entrusted to the salesperson in that capacity by a person;

(s) demonstrating unworthiness or incompetency to act as a broker or salesperson; or

(t) conviction of a felony.

(2) (a) It is unlawful for a broker or salesperson to openly advertise property belonging to others, whether by means of printed material, radio, television, or display or by other means, unless the broker or salesperson has a signed listing agreement from the owner of the property. The listing agreement must be valid as of the date of advertisement.

(b) The provisions of subsection (2)(a) do not prevent a broker or salesperson from including information on properties listed by other brokers or salespersons who will cooperate with the selling broker or salesperson in materials dispensed to prospective customers.

(c) The license of a broker or salesperson who violates this subsection (2) may be suspended or revoked as provided in subsection (1).

History: En. Sec. 14, Ch. 250, L. 1963; amd. Sec. 5, Ch. 261, L. 1969; amd. Sec. 188, Ch. 350, L. 1974; R.C.M. 1947, 66-1937; amd. Sec. 2, Ch. 188, L. 1979; amd. Sec. 1, Ch. 246, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 246 at end of second sentence of (1)(a) inserted "and the trade name, if any, by which the office is known"; in (1)(g), after "transaction", inserted "including failing to disclose in advertisements for real property the person's dual capacity as broker and principal"; inserted (2) requiring a broker or salesperson to have a signed listing agreement from the property owner prior to openly advertising the property and providing a penalty; and made minor changes in style.

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of Director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-51-322. Right to notice and hearing. When the board has investigated an application for a real estate broker's or salesman's license or, subject to 37-1-101 and 37-1-121, investigated the actions of a real estate broker or salesman on the sworn complaint in writing of a person or on its own motion and the investigation has revealed reasonable grounds for denying the application or reasonable indication of a violation of this chapter as cause for revoking or suspending a license issued to a real estate broker or salesman, the board shall, before denying the application or revoking or suspending the license, give notice and set the matter for hearing.

History: En. Sec. 8, Ch. 261, L. 1969; amd. Sec. 189, Ch. 350, L. 1974; R.C.M. 1947, 66-1938.1.

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

37-51-323. Penalties — criminal — civil. (1) Any individual acting as a broker or salesman without a license or while his license is suspended or revoked or any person who violates any provision of this chapter shall be guilty of a misdemeanor and upon conviction thereof by a district court of this state shall be punishable by a fine of not less than $100 or more than $500 or by imprisonment for a term not to exceed 90 days, or both. Upon conviction of a second or subsequent violation, the person shall be punishable by a fine of not less than $500 or more than $2,000 or by imprisonment for a term not to exceed 6 months, or both.

(2) In case any person in a civil action is found guilty of having received any money or the equivalent thereof as a fee, commission, compensation, or profit by or in consequence of a violation of any provision of this chapter, he shall in addition be liable to a penalty of not less than the amount of the sum of money so received and not more than three times the sum so received, as may be determined by the court, which penalty may be recovered in any court of competent jurisdiction by any person aggrieved.

History: En. Sec. 17, Ch. 250, L. 1963; amd. Sec. 6, Ch. 261, L. 1969; amd. Sec. 1, Ch. 541, L. 1977; R.C.M. 1947, 66-1940.

Part 4
Miscellaneous Provisions

37-51-401. Action for compensation limited to licensed broker or salesman. Any person engaged in the business of or acting in the capacity of a real estate broker or real estate salesman within this state shall not be permitted to bring or maintain any action in the courts for the collection of compensation for the sale or lease or otherwise disposing of real estate without first alleging and proving that such person was a duly licensed real estate broker or real estate salesman or authorized to act as a broker under the provisions of this chapter at the time the alleged cause of action or claim arose.

History: En. Sec. 18, Ch. 250, L. 1963; amd. Sec. 7, Ch. 261, L. 1969; R.C.M. 1947, 66-1941.

Part 5
Recovery Account

37-51-501. Real estate recovery account established — minimum balance — interest. (1) There is established in the state special revenue fund for the use of the board a real estate recovery account. The account is used to provide payment of claims based on unsatisfied judgments against persons licensed under the provisions of this chapter. The real estate recovery account is statutorily appropriated as provided in 17-7-502.

(2) The board shall maintain a minimum balance of $100,000 in the account. The board may in its discretion transfer any money in excess of that amount from the account to the state special revenue fund for the use of the board in accordance with the purposes provided in 37-51-204.

(3) Money earned on the investment of funds in the account must be credited to the account annually.

History: En. Sec. 3, Ch. 688, L. 1985.

37-51-502. Initial licensure and additional assessment. (1) A person initially licensed under the provisions of this chapter in 1986 or thereafter shall, in addition to paying any license fee required under this chapter, be assessed the sum of $35 at the time of licensure, to be credited to the real estate recovery account.

(2) If at any time the balance in the real estate recovery account is less than $100,000, every person licensed under this chapter may be assessed a sum, which sum is determined by the board to be sufficient to maintain the balance of the account at a minimum of $100,000.

History: En. Sec. 4, Ch. 688, L. 1985.

37-51-503. Claims against fund — orders for payment. (1) Whenever a person obtains a final judgment in any court of competent jurisdiction against any person licensed under this chapter for the conversion of trust funds or arising directly out of any act or transaction occurring on or after July 1, 1985, for which a license is required under this chapter, he may after executing on such final judgment file an application, in accordance with this section and 37-51-504, with the board for an order directing payment out of the account for any actual and direct loss unpaid on the judgment.

(2) No application or order for payment from the account may be made for:

(a) a judgment which has been satisfied;

(b) any amount in excess of $25,000 for any one licensee, regardless of the number of persons injured by acts of the licensee or number of parcels of real estate involved in the transaction or transactions;

(c) attorney fees and exemplary or punitive damages; or

(d) amounts remaining unpaid on any final judgment entered more than 2 years prior to the date of application.

(3) The application must be:

(a) served by certified mail, return receipt requested, upon the board, the licensee, and any other party to the transaction referred to in the application; and

(b) filed with the board along with an affidavit of service.

History: En. Sec. 5, Ch. 688, L. 1985.

Cross-References

Execution of judgment, Title 25, ch. 13.

Proceedings in aid of execution, Title 25, ch. 14.

37-51-504. Form of application. The person making application for payment from the account must show in the application:

(1) that he is not the spouse of the judgment debtor or the personal representative of such spouse;

(2) that he has obtained a judgment which satisfies the requirements of 37-51-503, stating the amount of the judgment and the amount unpaid on the date of the application;

(3) that he has, on the dates and at the times shown by the applicant, diligently pursued the remedies of execution and proceedings in aid of execution provided in Title 25, chapters 13 and 14, respectively;

(4) the amount of any money obtained as a result of the proceedings required to be shown in subsection (3) and the balance of the judgment remaining unpaid for which application is made; and

(5) that he has diligently pursued his remedies of execution and proceedings in aid of execution against any other person against whom he has a judgment as a result of the transaction for which he seeks recovery from the account.

History: En. Sec. 6, Ch. 688, L. 1985.

37-51-505. Motion to dismiss application. The licensee may request the board at any time to dismiss the application if it appears that the application is without merit. The motion may be supported by the affidavit of any person having knowledge of the facts and may be made on the basis that the application and the judgment referred to therein do not form the basis for a payable claim under 37-51-503 and 37-51-504. The board shall give the applicant at least 10 days' written notice of any motion to dismiss.

History: En. Sec. 7, Ch. 688, L. 1985.

37-51-506. Hearing on application. (1) Within 30 days of the filing of the affidavit of service, the board shall conduct a hearing upon the application. Upon the motion of either party, the board may continue the hearing up to 60 days and upon a showing of good cause may continue the hearing such further period as the board considers appropriate.

(2) At the hearing the board shall determine by a preponderance of the evidence the truth of any allegations made in the application and supporting documents that are challenged by the licensee.

History: En. Sec. 8, Ch. 688, L. 1985.

37-51-507. Payment from account. If the board finds after the hearing that an applicant has proved a valid claim against the account, the board shall enter an order requiring payment from the account of whatever sum it finds to be due under the provisions of this part.

History: En. Sec. 9, Ch. 688, L. 1985.

37-51-508. Limitation of payment — pro rata distribution. (1) The liability of the account may not exceed $25,000 for any one licensee until that licensee has repaid the account. If the $25,000 liability of the account is insufficient to pay in full the valid claims of all applications that have been filed against any one licensee and ordered to be paid, the $25,000 must be distributed among those claimants in the ratio that the amount ordered to be paid to any one claimant bears to the total amounts ordered to be paid or in such other manner as the board considers equitable; and upon such a distribution, all claims are considered satisfied by the amount so distributed. Distribution of such money must, at any time, be among the persons ordered to receive the same, without regard to the order or priority in which their respective judgments were obtained or their applications filed.

(2) Upon petition of any person, the board may require all existing applications for payment of claims against one licensee to be joined in one proceeding for the purpose of a timely determination of their respective rights to the money in the account.

(3) An application for payment of a claim against a licensee filed after the distribution of the full amount for which the account is liable for that licensee must be denied by the board.

History: En. Sec. 10, Ch. 688, L. 1985.

37-51-509. Claims satisfied in order of filing. If account funds are insufficient to satisfy any claim or portion of a claim ordered to be paid on behalf of a licensee for whom the account liability of $25,000 has not been exceeded, the board shall, when sufficient money has been deposited in the account, satisfy such unpaid claims or portions of them in the order that the applications for such claims were originally filed pursuant to 37-51-503. The board shall pay accumulated interest beginning on the date of the order to pay at the judgment rate on each such unpaid claim.

History: En. Sec. 11, Ch. 688, L. 1985.

37-51-510. Deposits by board. Money received by the board under 37-51-511 must be deposited in the account and allocated exclusively for the purposes provided in this part.

History: En. Sec. 12, Ch. 688, L. 1985.

37-51-511. Subrogation rights of board. Upon payment of money from the account, the board is subrogated to all of the rights of the judgment creditor to the extent of the amount so paid and the judgment creditor is considered to have assigned to the board all of his right, title, and interest in the judgment to the extent of the amount paid from the account. Any amount and interest recovered by the board on the judgment must be deposited in the account.

History: **En. Sec. 13, Ch. 688, L. 1985.**

37-51-512. Other disciplinary powers unimpaired — effect of repayment to fund. Nothing contained in this part limits the authority of the board to take disciplinary action against any licensee under other provisions of this chapter, nor does the repayment in full of all obligations to the account by any licensee nullify or modify the effect of any other disciplinary action taken by the board under the provisions of this chapter.

History: **En. Sec. 14, Ch. 688, L. 1985.**

Part 6

Licensure of Property Managers

Part Compiler's Comments

Effective Date: Section 11, Ch. 142, L. 1993, provided: "[This act] [37-51-601 through 37-51-608] is effective July 1, 1993."

37-51-601. License required to manage property. It is unlawful for a person to engage in or conduct business, directly or indirectly, or to advertise as a property manager within this state without having met the qualifications for licensure as a property manager and having been granted a license by the board.

History: **En. Sec. 2, Ch. 142, L. 1993.**

37-51-602. Definition of property management — exemptions from application. (1) An act performed for compensation of any kind in the leasing, renting, subleasing, or other transfer of possession of real estate owned by another without transfer of the title to the real estate, except as specified in this section, constitutes the practice of property management. The provisions of this chapter do not apply to:

(a) a relative of the owner of the real estate, defined as follows:

(i) a son or daughter of the property owner or a descendant of either;

(ii) a stepson or stepdaughter of the property owner;

(iii) a brother, sister, stepbrother, or stepsister of the property owner;

(iv) the father or mother of the property owner or the ancestor of either;

(v) a stepfather or stepmother of the property owner;

(vi) a son or daughter of a brother or sister of the property owner;

(vii) a brother or sister of the father or mother of the property owner;

(viii) a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the property owner; or

(ix) the spouse of the property owner;

(b) a person who leases no more than four residential real estate units;

(c) a person acting as attorney-in-fact under a power of attorney from the owner of real estate who authorizes the final consummation of any contract for the renting or leasing of the real estate. This exemption is meant to exclude a single or irregular transaction and may not be routinely used to escape the necessity of obtaining a license.

(d) an attorney at law in the performance of duties as an attorney;

(e) a receiver, trustee in bankruptcy, personal representative, person acting in regard to real estate pursuant to a court order, or a trustee under a trust agreement, deed of trust, or will;

(f) an officer of the state or any of its political subdivisions in the conduct of official duties;

(g) a person acting as a manager of a housing complex for low-income individuals subsidized either directly or indirectly by the state, any agency or political subdivision of the state, or the government or an agency of the United States;

(h) a person who receives compensation from the owner of the real estate in the form of reduced rent or salary, unless that person holds signatory authority on the account in which revenue from the real estate is deposited or disbursed;

(i) a person employed by the owner of the real estate if that person's property management duties are incidental to the person's other employment-related duties; or

(j) a person employed on a salaried basis by only one person.

(2) A licensed real estate broker on active status or a licensed real estate salesman on active status and acting under the supervision of a real estate broker may act as a property manager without meeting any qualifications in addition to those required for licensure as a real estate broker or real estate salesman.

History: En. Sec. 3, Ch. 142, L. 1993.

37-51-603. Qualification of property manager applicants — examination — form of licenses. (1) The board by rule shall require an applicant for licensure to provide information that the board believes is necessary to ensure that a person granted a property manager license is of good repute and competent to transact the business of a property manager in a manner that safeguards the welfare and safety of the public.

(2) (a) The board shall require an applicant for a property manager license to:

(i) apply for licensure to the department;

(ii) furnish written evidence that the applicant has completed the number of classroom hours that the board determines appropriate in a course of study approved by the board and taught by instructors approved by the board; and

(iii) satisfactorily complete an examination dealing with the material taught in the course of study.

(b) The course of study must include the subjects of real estate leasing principles, real estate leasing law, and related topics.

(3) Examinations must be given at least once every 4 months at places within the state that the board prescribes. The board shall establish by rule the contents of and requirements to pass the examination.

(4) An applicant for licensure as a property manager must be at least 18 years of age and must have graduated from an accredited high school or completed an equivalent education as determined by the board.

(5) The board shall prescribe the form of the license, and the license must bear the seal of the board. A property manager shall display the license conspicuously in the property manager's place of business.

(6) The department shall prepare and deliver annually to the licensee a pocket card in a form prescribed by the board.

History: En. Sec. 4, Ch. 142, L. 1993.

37-51-604. Annual renewal — continuing education — fees. (1) Annual fees for renewal of the property manager license are due and payable during the month of October. Failure to remit the annual fee before November 15 automatically cancels the license. The board shall establish by rule penalty fees for late renewals.

(2) The board shall prescribe by rule requirements for continuing education that applicants shall satisfy before they are allowed to renew their licenses.

(3) The fees prescribed by the board must be charged by the department and paid into the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 5, Ch. 142, L. 1993.

37-51-605. Property manager's office — notice of change of address. A property manager shall maintain a fixed office in this state at which the original license of the property manager must be prominently displayed. The office manager must be designated on the license. If the property manager changes the location of the office, the property manager shall notify the department of the new address within 10 days after the change of address.

History: En. Sec. 6, Ch. 142, L. 1993.

37-51-606. Revocation, suspension, or denial of license — initiation of proceedings — grounds. (1) The board may on its own motion and shall, on the sworn written complaint of a person, investigate the actions of a property manager licensee, subject to 37-1-101 and 37-1-121. The board may revoke or suspend a license, place the licensee on probation, issue a letter of censure or reprimand to the licensee, or levy a fine in an amount not to exceed $5,000, proceeds of which must be placed in the state general fund, if the licensee:

(a) is guilty of fraud or deceit in procuring or attempting to procure a license;

(b) is unfit or incompetent by reason of negligence, habit, or other causes;

(c) has demonstrated unworthiness, incompetency, or lack of honesty;

(d) is guilty of unprofessional conduct as defined by regulations prescribed by the board; or

(e) has willfully or repeatedly superseded the authority of the license by selling or attempting to sell real property or otherwise has willfully or repeatedly violated this part.

(2) The board may deny an application for licensure if the applicant:

(a) made untrue or fraudulent statements in support of the application;

(b) failed to meet the requirements stated in 37-51-603 for licensing; or

(c) violated any of the grounds set forth in this section, that would be grounds for suspension or revocation of a license if a license had already been issued.

History: **En. Sec. 7, Ch. 142, L. 1993.**

37-51-607. Transactions with nonlicensed persons unlawful — action for compensation limited to licensees. (1) It is unlawful for a licensed property manager to employ or compensate, directly or indirectly, a person who is not a licensed property manager for performing the acts regulated by this part.

(2) An action may not be brought or maintained in the courts for the collection of compensation for the lease of real estate unless the plaintiff first alleges that the plaintiff was licensed or was authorized to act without a license at the time the alleged cause of action or claim arose.

History: **En. Sec. 8, Ch. 142, L. 1993.**

37-51-608. Penalties — criminal — civil. (1) A person who acts without a license or while a license is suspended or revoked or who violates any provision of this part is guilty of a misdemeanor. For a first conviction, the person shall be punished by a fine of not less than $100 or more than $500 or by imprisonment for a term not to exceed 90 days, or both. Upon conviction of a second or subsequent offense, the person shall be punished by a fine of not less than $500 or more than $2,000 or by imprisonment for a term not to exceed 6 months, or both.

(2) If a person is determined in a civil action to have received any money or the equivalent as a fee, commission, or other compensation while violating the provisions of this part, the person is also liable for a penalty of not less than the amount received and not more than three times the amount received, as the court may determine.

History: **En. Sec. 9, Ch. 142, L. 1993.**

CHAPTER 52

TITLE ABSTRACTERS

(Repealed. Sec. 195, Ch. 575, L. 1981)

Chapter Compiler's Comments

Histories of Repealed Sections:

37-52-101. En. 66-2101.1 by Sec. 193, Ch. 350, L. 1974; R.C.M. 1947, 66-2101.1.

37-52-102. En. Secs. 17, 18, Ch. 105, L. 1931; re-en. Secs. 4139.17, 4139.18, R.C.M. 1935; R.C.M. 1947, 66-2117(part), 66-2118.

37-52-201. En. Sec. 3, Ch. 105, L. 1931; re-en. Sec. 4139.3, R.C.M. 1935; amd. Sec. 195, Ch. 350, L. 1974; R.C.M. 1947, 66-2103.

37-52-202. En. Sec. 4, Ch. 105, L. 1931; re-en. Sec. 4139.4, R.C.M. 1935; amd. Sec. 124, Ch. 147, L. 1963; amd. Sec. 196, Ch. 350, L. 1974; amd. Sec. 1, Ch. 214, L. 1975; amd. Sec. 37, Ch. 439, L. 1975; amd. Sec. 17, Ch. 101, L. 1977; R.C.M. 1947, 66-2104(2)(1).

37-52-203. En. Sec. 5, Ch. 105, L. 1931; re-en. Sec. 4139.5, R.C.M. 1935; amd. Sec. 197, Ch. 350, L. 1974; R.C.M. 1947, 66-2105.

37-52-301. En. Sec. 1, Ch. 105, L. 1931; re-en. Sec. 4139.1, R.C.M. 1935; R.C.M. 1947, 66-2101.

37-52-302. En. Sec. 8, Ch. 105, L. 1931; re-en. Sec. 4139.8, R.C.M. 1935; amd. Sec. 198, Ch. 350, L. 1974; amd. Sec. 4, Ch. 215, L. 1975; R.C.M. 1947, 66-2108.

37-52-303. En. Sec. 10, Ch. 105, L. 1931; re-en. Sec. 4139.10, R.C.M. 1935; amd. Sec. 199, Ch. 350, L. 1974; amd. Sec. 5, Ch. 215, L. 1975; R.C.M. 1947, 66-2110.

37-52-304. En. Sec. 11, Ch. 105, L. 1931; re-en. Sec. 4139.11, R.C.M. 1935; amd. Sec. 200, Ch. 350, L. 1974; amd. Sec. 6, Ch. 215, L. 1975; R.C.M. 1947, 66-2111.

37-52-305. En. Sec. 4, Ch. 105, L. 1931; re-en. Sec. 4139.4, R.C.M. 1935; amd. Sec. 124, Ch. 147, L. 1963; amd. Sec. 196, Ch. 350, L. 1974; amd. Sec. 1, Ch. 214, L. 1975; amd. Sec. 37, Ch. 439, L. 1975; amd. Sec. 17, Ch. 101, L. 1977; R.C.M. 1947, 66-2104(2)(2).

37-52-306. En. Sec. 14, Ch. 105, L. 1931; re-en. Sec. 4139.14, R.C.M. 1935; amd. Sec. 202, Ch. 350, L. 1974; R.C.M. 1947, 66-2114.

37-52-307 through 37-52-310 reserved.

37-52-311. En. Sec. 15, Ch. 105, L. 1931; re-en. Sec. 4139.15, R.C.M. 1935; amd. Sec. 203, Ch. 350, L. 1974; amd. Sec. 2, Ch. 541, L. 1977; R.C.M. 1947, 66-2115.

37-52-312. En. Sec. 17, Ch. 105, L. 1931; re-en. Sec. 4139.17, R.C.M. 1935; R.C.M. 1947, 66-2117(part).

37-52-401. En. Sec. 16, Ch. 105, L. 1931; re-en. Sec. 4139.16, R.C.M. 1935; R.C.M. 1947, 66-2116.

37-52-402. En. Sec. 3, Ch. 43, L. 1915; re-en. Sec. 4141, R.C.M. 1921; R.C.M. 1947, 66-2119.

CHAPTER 53

TIMESHARE SALES

Part 1 — General

37-53-101. Short title.
37-53-102. Definitions.
37-53-103. Fees.
37-53-104. Rulemaking authority.

Part 2 — Registration of Timeshare Offerings

37-53-201. Registration of timeshare offering required.
37-53-202. Application for registration.
37-53-203. Registration period — renewal.
37-53-204. Alternative filing documents.
37-53-205. Exemption from registration.
37-53-206 through 37-53-210 reserved.
37-53-211. Approval or disapproval of application or registration.
37-53-212. Conditions upon registration.
37-53-213. Waiver of liability.
37-53-214. Approval of advertising.

Part 3 — Licensure of Brokers and Salespersons

37-53-301. Licensure of timeshare brokers and timeshare salespersons.
37-53-302. Denial, suspension, or revocation of license or application.
37-53-303. Disclosure document.
37-53-304. Disclosure to purchaser — cancellation of agreement.
37-53-305. Transfer of developer's interest.
37-53-306. Good faith requirement — prohibited provisions.
37-53-307. Illegal practices.
37-53-308. Civil liability.

Part 4 — Promotional Offers

37-53-401. Prize and gift promotional offers — filing.
37-53-402. Prize and gift promotional offer advertising content.
37-53-403. Awarding of gifts and prizes.

Part 5 — Enforcement

37-53-501. Investigations by board.
37-53-502. Cease and desist orders.
37-53-503. Hearing procedure — orders.
37-53-504. Attorney general to act as attorney for board.
37-53-505. Injunctions.
37-53-506. Criminal proceedings.

Chapter Cross-References

Unit Ownership Act — condominiums, Title 70, ch. 23.

Part 1
General

37-53-101. Short title. This chapter may be cited as the "Montana Timeshare Act".

History: **En. Sec. 1, Ch. 444, L. 1987.**

37-53-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Advertisement" means a written, printed, audio, or visual communication that is published in whole or in part to sell, offer to sell, or solicit an offer for a timeshare.

(2) "Affiliate" means a person who controls, is controlled by, or is under the control of a developer.

(3) "Association" or "owners' association" means the association of owners created by the timeshare instruments for purposes of managing and maintaining the project for the benefit of all timeshare owners.

(4) "Board" means the board of realty regulation provided for in 2-15-1867.

(5) "Developer" means:

(a) a person creating timeshares or engaged in the business of selling his own timeshares;

(b) a person who controls, is controlled by, or is in common control with the person engaged in creating or selling timeshares; or

(c) any successor or assignee of a person referred to in subsections (5)(a) or (5)(b).

(6) "Managing entity" means a person hired by the timeshare association or developer to manage the timeshare plan or the timeshare property.

(7) "Offer" or "offering" means an inducement, solicitation, or attempt to encourage a person to acquire a timeshare. An offer is made in this state if the offer originates in this state or if the principal timeshare property is located in this state.

(8) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, or other legal or commercial entity.

(9) "Prize and gift promotional offer" means advertising material stating that a prospective purchaser may receive goods or services other than the timeshare plan itself, either free or at a discount, including but not limited to the use of a prize, gift, award, premium, or lodging or vacation certificate.

(10) "Project" means the real property or real estate, that must contain more than one unit, in which timeshares are created by a single instrument or set of instruments.

(11) "Promoter" means any person who initiates the inducement, solicitation, or encouragement of another person, by any means, of the review or acquisition of a timeshare interval.

(12) "Purchaser" means a person, other than a developer, who by means of a voluntary transfer acquires a legal or equitable interest in a timeshare, other than as security for an obligation.

(13) "Real estate" means real estate as defined in 37-51-102.

(14) "Sale" or "sell" includes each contract of sale of, contract to sell, or disposition of a timeshare for value.

(15) "Timeshare broker" means a natural person who supervises a timeshare sales operation and one or more timeshare salespersons.

(16) "Timeshare expenses" means expenditures, fees, charges, or liabilities:

(a) incurred with respect to the timeshares by or on behalf of all timeshare owners in one timeshare property; and

(b) imposed on the timeshare by the entity governing a project of which the timeshare is a part, together with any allocations to reserve. The term does not include purchase money payable for timeshares.

(17) "Timeshare instrument" means one or more documents, by whatever name denominated, creating or regulating timeshares.

(18) "Timeshare interval" or "timeshare interest" means the right, however evidenced or documented, to use and occupy one or more timeshare units on a periodic basis according to an arrangement allocating such use and occupancy rights between similar users.

(19) "Timeshare owner" means a person, other than a developer, who is an owner or co-owner of a timeshare. If title to a timeshare is held in trust, timeshare owner means the beneficiary of the trust.

(20) "Timeshare salesperson" means a person who for a salary, commission, or compensation of any kind is associated, either directly or indirectly, regularly or occasionally, with a timeshare broker to sell, purchase, or negotiate for sale, purchase, lease, or exchange of the timeshare interests in real estate and who, on behalf of a developer, sells or offers to sell a timeshare to a purchaser.

(21) "Timeshare unit" or "unit" means the real property or portion thereof in which the timeshare exists and that is designated for separate use, including campgrounds, campsites, and outdoor recreation sites with spaces designed or promoted for the purpose of locating a trailer, tent, tent trailer, camper, or similar device for land-based portable housing.

History: **En. Sec. 2, Ch. 444, L. 1987.**

37-53-103. Fees. (1) The board shall charge and collect fees fixed by this section. All fees collected under this chapter must be deposited into the state special revenue fund for the use of the board and are not refundable except as provided in this chapter.

(2) The initial fee for filing an application for registration for sale of a timeshare is $500. Any filing containing over 400 intervals must be accompanied by a fee of $5 for each additional interval.

(3) A fee for amendment of registration for the purpose of adding additional intervals during a registration period is $200 plus $5 for each interval in excess of 50 added by such amendment.

(4) The fee for an application for renewal of registration is $200.

(5) The fee for an initial application for or renewal of a license as a timeshare salesperson is $15.

(6) The fee for an initial application for or renewal of a license as a timeshare broker is $35.

(7) The fee for an amendment of registration, other than the addition of units, as required in 37-53-203(3), is $200.

History: En. Sec. 29, Ch. 444, L. 1987.

37-53-104. Rulemaking authority. The board shall adopt rules to carry out the provisions of this chapter. The rules may include but are not limited to:

(1) format of forms for applications and renewal of registration and prescribing any additional information to be supplied;

(2) documents acceptable in lieu of registration documents under 37-53-204;

(3) conditions that may be placed upon registration under 37-53-212;

(4) the subject matter of the examination or continuing education requirement for license as a timeshare salesperson or timeshare broker; and

(5) additional information included in a disclosure document.

History: En. Sec. 30, Ch. 444, L. 1987.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 2

Registration of Timeshare Offerings

37-53-201. Registration of timeshare offering required. A timeshare offering may not be advertised, offered, or sold in this state unless it is registered as provided in this chapter.

History: En. Sec. 3, Ch. 444, L. 1987.

37-53-202. Application for registration. An application for registration of a timeshare offering must be in a form developed by the board in conjunction with input from the timeshare industry. The application must be signed by the applicant and accompanied by the registration fee. Except as provided in 37-53-204, the application must contain:

(1) audited financial statements showing the financial condition of the developer and any affiliate, including:

(a) a balance sheet dated within 4 months before the filing of the application for registration; and

(b) statements of income, shareholders' equity, and material changes in financial position as of the end of the prior fiscal year and for any period between the end of the prior fiscal year and the date of the last balance sheet;

(2) a projected budget for the timeshare project for 2 years after the offering being made, including but not limited to source of revenues and expenses of construction, development, management, maintenance, advertisement, operating reserves, interest, and any other necessary reserves;

(3) a description of the background of the developer for the previous 10 years, including information about the business experience of the developer

and any relevant criminal convictions, civil lawsuits, or administrative actions related to any offering during that period;

(4) a statement disclosing any fees in excess of the stated price per unit to be charged to the purchasers, a description of their purpose, and the method of calculation;

(5) a statement disclosing when and where the developer or an affiliate has previously sold timeshares;

(6) a statement of any liens, defects, or encumbrances on or affecting the title to the timeshare units;

(7) copies of all timeshare instruments;

(8) a copy of the disclosure document provided for in 37-53-303, signed by the applicant;

(9) an irrevocable consent to service of process signed by the applicant; and

(10) any other information that the board may by rule require in the protection of the public interest or necessary to describe the risks involved.

History: En. Sec. 4, Ch. 444, L. 1987; amd. Sec. 1, Ch. 12, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 12 at beginning of (1) inserted "audited". Amendment effective January 29, 1993.

37-53-203. Registration period — renewal. (1) A timeshare offering registration is effective for 1 year from the date of approval of the registration application.

(2) Registration of a timeshare offering may be renewed for an additional 1-year period by filing a renewal application with the board no later than 30 days before the expiration of the registration period and paying the prescribed fee. A renewal application must contain any information the board requires to indicate any substantial changes in the information contained in the original application.

(3) If a materially adverse change in the condition of the developer or an affiliate occurs during any year, an amendment to the documents filed under 37-53-202 must be filed, along with the prescribed fee.

History: En. Sec. 5, Ch. 444, L. 1987.

37-53-204. Alternative filing documents. (1) In lieu of the documents required to be filed with an application under 37-53-202, the board may accept:

(a) a disclosure document filed with an agency of the United States or any other state; or

(b) a disclosure document compiled in accordance with a rule of an agency of the United States or any other state.

(2) The board shall prescribe by rule those documents acceptable under subsection (1).

History: En. Sec. 6, Ch. 444, L. 1987.

37-53-205. Exemption from registration. The registration requirements of this chapter do not apply to:

(1) an offer, sale, or transfer of not more than two timeshare interests by a timeshare owner in a 12-month period;

(2) a gratuitous transfer of a timeshare;

(3) a sale under court order;

(4) a sale by any government or a governmental agency;

(5) a sale by forfeiture, foreclosure, or deed in lieu of foreclosure; or

(6) a sale of a project or all timeshare units therein to any one purchaser.

History: En. Sec. 7, Ch. 444, L. 1987.

37-53-206 through 37-53-210 reserved.

37-53-211. Approval or disapproval of application or registration. (1) Registration of a timeshare offering is effective upon written notice of approval of the application by the board or upon the passage of 30 calendar days after filing of a completed application if not approved or denied prior to that time.

(2) The board may issue an order, subject to 37-53-503, denying, suspending, or revoking any application or registration if the board finds that the order is in the public interest and that:

(a) the application or registration is incomplete or contains a statement that is false or misleading with respect to any material fact;

(b) any provision of this chapter or any rule or order lawfully issued under this chapter has been violated;

(c) the activities of the developer include or would include activities that are illegal; or

(d) the timeshare offering has worked or would tend to work a fraud on purchasers.

(3) The board shall promptly notify the applicant or registrant of any order denying, suspending, or revoking registration and of the applicant's or registrant's right to request a hearing within 20 days of receipt of notification. If the applicant or registrant does not request a hearing, the order remains in effect until the board modifies or vacates it.

History: En. Sec. 8, Ch. 444, L. 1987.

37-53-212. Conditions upon registration. To protect the public interest, the board may require as a condition of registration that the registrant establish an independent trust, escrow, or similar arrangement that assures a purchaser quiet enjoyment of the timeshare unit.

History: En. Sec. 9, Ch. 444, L. 1987.

Cross-References

Trust code, Title 72, ch. 33 through 36.

37-53-213. Waiver of liability. The fact that an application for registration has been filed or that a timeshare offering has been registered does not constitute a finding by the board that any document filed under this chapter is complete, true, and not misleading. The filing or registration does not mean that the board has given approval to, recommended, or determined the merits or qualifications of any person, timeshare, or transaction.

History: En. Sec. 10, Ch. 444, L. 1987.

37-53-214. Approval of advertising. (1) No person may publish an advertisement in this state offering a timeshare that is subject to the registration requirements of 37-53-201 unless a true copy of the advertisement has first been filed in the office of the board at least 7 days before publication or such other period as the board may establish by rule.

(2) Nothing in this chapter applies to any radio or television station or any publisher, printer, or distributor of any newspaper, magazine, billboard, or other advertising medium that accepts advertising in good faith without reasonable knowledge of its violation of any provision of this chapter.

History: **En. Sec. 11, Ch. 444, L. 1987.**

Part 3

Licensure of Brokers and Salespersons

37-53-301. Licensure of timeshare brokers and timeshare salespersons. (1) (a) A person offering timeshare units for his own account or for the account of others must be licensed as a timeshare salesperson or timeshare broker unless the offering is exempt under 37-53-205. Licensure may be obtained:

(i) upon completion of an application and personal disclosure statement and passage of an examination prescribed by the board demonstrating knowledge of the timeshare industry and this chapter; and

(ii) upon successful completion of a course of education related to the timeshare industry that has been approved by the board.

(b) The board shall then issue a certificate of completion to the applicant.

(2) A person licensed as a real estate broker or salesperson under Title 37, chapter 51, may act as a timeshare salesperson or timeshare broker upon successful completion of a course of education related to the timeshare industry that has been approved by the board. The board shall then issue a certificate of completion to the applicant. No license other than that issued pursuant to Title 37, chapter 51, is required.

History: **En. Sec. 12, Ch. 444, L. 1987.**

37-53-302. Denial, suspension, or revocation of license or application. The board may by an order, subject to 37-53-503, deny, suspend, or revoke a timeshare salesperson's or timeshare broker's license or application for license if the board finds that the order is in the public interest and that the applicant or licensee:

(1) has filed an application for licensure and personal disclosure statement as a timeshare salesperson or timeshare broker that is incomplete in any material respect or contains any statement that is, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) has violated or failed to comply with any provision of this chapter, rules adopted under this chapter, or Title 37, chapter 51;

(3) has been convicted of a felony involving theft, fraud, or any consumer protection statute or a felony involving moral turpitude and related to the occupation of timeshare salesperson or timeshare broker;

(4) is permanently or temporarily enjoined by a court from engaging in or continuing any conduct or practice involving an aspect of the timeshare business;

(5) has engaged in dishonest or unethical practices in the timeshare business; or

(6) has not complied with any condition imposed by the board or is not qualified on the basis of knowledge of the timeshare industry or this chapter.

History: **En. Sec. 13, Ch. 444, L. 1987.**

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

37-53-303. Disclosure document. A person who offers or sells a timeshare shall provide the prospective purchaser with a written disclosure document before the prospective purchaser signs an agreement for the purchase of a timeshare. The disclosure document must include:

(1) the official name and address of the developer, its parent or affiliates, and the names and addresses of the director and officers of each;

(2) the location of the timeshare property;

(3) a general description of the timeshare property and the timeshare units;

(4) a list of all units offered by the promoter in the same project, including:

(a) the types, current prices, and number of units;

(b) the types and durations of the timeshares;

(c) the maximum number of units that may become part of the timeshare property;

(d) a statement of the maximum number of timeshares that may be created or a statement that there is no maximum;

(5) a description of the types of financing offered by the promoter;

(6) a statement of ownership of all properties included in the timeshare offering, including any liens or encumbrances affecting the property;

(7) copies of any agreements or leases to be signed by purchasers at closing and a copy of the timeshare instrument;

(8) the identity of the managing entity and the name, address, and telephone number of the person or persons in charge, and the manner, if any, whereby the developer may change the managing entity;

(9) a true copy of the current or projected budget of the owners' association along with a description of the nature and purpose of all charges, dues, maintenance fees, and other expenses that may be assessed, including the formula for payment of charges if all timeshares are not sold and a statement of who pays additional costs;

(10) a statement in boldface type on the cover page of the disclosure document that, within 3 days after receipt of a disclosure document or the signing of the timeshare purchase agreement, whichever is later, a purchaser may cancel any agreement for the purchase of a timeshare from a developer or salesperson and that the cancellation must be in writing and be delivered either in person or by certified mail to the developer or the developer's agent;

(11) any restrictions on transfers of a timeshare or portion thereof;

(12) a description of any insurance coverage provided for the benefit of timeshare owners by the managing entity or the timeshare owners' association;

(13) a full and accurate disclosure of whether the timeshare owners are permitted or required to become members of or participate in any program for the exchange of property rights among themselves or with the timeshare owners of other timeshare units, or both, and a complete description of the program; and

(14) any additional information the board finds necessary to fully inform prospective purchasers, including but not limited to the financial and background information required by 37-53-202.

History: **En. Sec. 14, Ch. 444, L. 1987.**

37-53-304. Disclosure to purchaser — cancellation of agreement. The developer or any person offering a timeshare shall provide a prospective purchaser with a copy of the disclosure document described in 37-53-303 before the execution of any agreement for the purchase of a timeshare. A purchaser may, within 3 days following receipt of a disclosure document or signing of a timeshare purchase agreement, whichever is later, cancel the agreement and receive a refund of any consideration paid by providing written notice of the cancellation to the promoter or promoter's agent either by certified mail or personal delivery. If the purchaser does not receive the disclosure document, the agreement is voidable by the purchaser until the purchaser receives the document and for 3 days thereafter. The provisions of this section may not be waived.

History: **En. Sec. 15, Ch. 444, L. 1987.**

37-53-305. Transfer of developer's interest. A developer may not sell, lease, assign, or otherwise transfer his interest in a project unless the transferee agrees in writing to honor the purchaser's right to use and occupy the timeshare unit, to honor the purchaser's right to cancel, and to comply with this chapter. Each purchaser whose contract may be affected must be given written notice of a transfer immediately after the transfer is made.

History: **En. Sec. 16, Ch. 444, L. 1987.**

37-53-306. Good faith requirement — prohibited provisions. (1) The parties to a timeshare agreement shall deal with each other in good faith.

(2) A developer may not require a purchaser to agree to a release, assignment, novation, waiver, or any other provision that relieves a person from a duty imposed by this chapter.

(3) Any provision in a timeshare instrument that designates jurisdiction or venue in a forum outside this state or the state or other jurisdiction where the project is located is void with respect to any cause of action that is enforceable in this state.

History: **En. Sec. 17, Ch. 444, L. 1987.**

37-53-307. Illegal practices. (1) It is unlawful for any person in connection with the offer, sale, or lease of a timeshare interest in this state to:

(a) make any false or misleading statement of a material fact or to omit a material fact;

(b) employ any device, scheme, or artifice to defraud;

(c) engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person;

(d) file or cause to be filed with the board any document that contains false or misleading information; or

(e) violate any provision of this chapter or a rule adopted under this chapter or any applicable provision of Title 37, chapter 51.

(2) A violation of this section is a misdemeanor punishable as provided in 46-18-212.

History: **En. Sec. 18, Ch. 444, L. 1987.**

Cross-References
Fraud defined, 28-2-404 through 28-2-406.
Unfair trade practices and consumer protection, Title 30, ch. 14.

37-53-308. Civil liability. Any person who offers, sells, or materially aids in the offer or sale of a timeshare in violation of this chapter is liable to the person buying the timeshare, who may sue to recover the consideration paid for the timeshare, together with interest at the current legal rate from date of payment and costs, upon the tender of the timeshare or for damages if the person no longer owns the timeshare.

History: En. Sec. 19, Ch. 444, L. 1987.

Cross-References
Legal interest, 31-1-106.

Part 4
Promotional Offers

Part Cross-References
Consumer protection — unlawful practices, 30-14-103.
Unfair competition and deception, 30-14-104.

37-53-401. Prize and gift promotional offers — filing. (1) A separate filing for each prize and gift promotional offer to be used in the sale of timeshare intervals must be made with the board at least 14 days prior to the use of such offer by the developer. No advertising material related to a prize and gift promotional offer may be distributed unless it is first filed with the board. If the board determines that any prize or gift has been misrepresented by the developer and if upon notification thereof the developer fails to correct such misrepresentation, the board may revoke or suspend the application or registration of the developer.

(2) Each filing of a prize and gift promotional offer with the board must include, when applicable:

(a) a copy of all advertising material to be used in connection with the prize and gift promotional offer;

(b) the name, address, and telephone number, including area code, of the supplier or manufacturer from whom each prize, gift, or other item is obtained;

(c) the manufacturer's model number or other description of such item;

(d) the information on which the developer relies in determining the verifiable retail value;

(e) the name, address, and telephone number, including area code, of the promotional entity responsible for overseeing and operating the prize and gift promotional offer; and

(f) the name and address of the registered agent in the state of the promotional entity for service of process purposes.

(3) Each developer shall file with the board by March 1 of each year the name, address, and telephone number, including area code, of each person who actually received a prize, gift, or other item that had a verifiable retail value or manufacturer's suggested retail price in excess of $150.

History: En. Sec. 20, Ch. 444, L. 1987.

37-53-402. Prize and gift promotional offer advertising content. All advertising material to be distributed in connection with a prize and gift promotional offer must contain:

(1) a description of the prize, gift, or other item that the prospective purchaser will actually receive, including the manufacturer's retail price or, if none is available, the verifiable retail value;

(2) all rules, terms, requirements, and preconditions that must be fulfilled or met before a prospective purchaser may claim any prize, gift, or other item involved in the prize and gift promotional plan, including whether the prospective purchaser is required to attend a sales presentation in order to receive the prize, gift, or other item;

(3) the date the offer expires;

(4) a statement of the number of items that will be awarded if the number of prizes, gifts, or other items to be awarded is limited; and

(5) the method by which prizes, gifts, or other items are to be awarded.

History: En. Sec. 21, Ch. 444, L. 1987.

37-53-403. Awarding of gifts and prizes. (1) Any prize, gift, or other item offered pursuant to a prize and gift promotional offer must be delivered to the prospective purchaser on the day he appears to claim it, whether or not he purchases a timeshare interval. If the prize is not available it must be presented or mailed at the developer's expense, postage prepaid, within 30 days thereafter.

(2) All prizes, gifts, or other items represented by the developer to be awarded in connection with any prize and gift promotional offer must be awarded by the date referenced in the advertising material used in connection with such offer.

History: En. Sec. 22, Ch. 444, L. 1987.

Part 5

Enforcement

37-53-501. Investigations by board. (1) The board may:

(a) conduct public or private investigations within or outside the state to:

(i) determine whether any registration should be granted, denied, or revoked;

(ii) determine whether a person has violated or is about to violate a provision of this chapter; or

(iii) aid in the enforcement of this chapter and rules issued under this chapter;

(b) administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records that the board considers relevant to the inquiry; and

(c) publish information concerning a violation of this chapter or a rule or order issued under this chapter.

(2) If a person fails to comply with a lawful subpoena, refuses to testify under lawful interrogation, or refuses to produce documents and records, the board may apply to the district court of any county for relief. After satisfactory

evidence of willful disobedience, the court may compel obedience by proceedings for contempt.

History: **En. Sec. 23, Ch. 444, L. 1987.**

37-53-502. Cease and desist orders. The board may by summary order, subject to 37-53-503, require any person to cease and desist from an act or practice if it appears that the person is violating or is about to violate a provision of this chapter or a rule or order issued under this chapter.

History: **En. Sec. 24, Ch. 444, L. 1987.**

37-53-503. Hearing procedure — orders. (1) Upon the entry of an order under 37-53-211, 37-53-302, or 37-53-502, the board shall promptly notify the applicant or registrant that the order has been entered and the reasons therefor and that it will become effective 20 days after receipt of the board's notification unless a hearing is requested under this section, in which case it will become effective on the date the board issues its final order. If a hearing is requested in writing by the applicant, the matter will be scheduled for hearing in accordance with subsection (2).

(2) If entry of the order results in denial of an application under 37-53-211 or 37-53-302, the hearing must be held within a reasonable time and in accordance with Title 2, chapter 4.

History: **En. Sec. 25, Ch. 444, L. 1987.**

37-53-504. Attorney general to act as attorney for board. The attorney general shall act as attorney for the board in actions and proceedings brought by or against it under this chapter. Fees and expenses of the attorney general acting in this capacity must be paid out of board money in the state special revenue fund.

History: **En. Sec. 26, Ch. 444, L. 1987.**

37-53-505. Injunctions. (1) The attorney general, in the name of the state or the board, may bring an action to enjoin a person from violating a provision of this chapter. Upon a proper showing, the district court shall grant a permanent or temporary injunction, restraining order, or writ of mandamus. The court may make any additional order of judgment necessary to restore to a person any interest in money or property, real or personal, that may have been acquired by an act prohibited or declared to be unlawful under this chapter. The prevailing party may recover costs of the action, including a reasonable attorney fee.

(2) The district court issuing an injunction shall retain jurisdiction. A person who violates the terms of an injunction shall pay a civil penalty as set by the court, but not to exceed $25,000.

(3) The attorney general, in the name of the state or the board, may apply to the district court to appoint a receiver or conservator for any person or the assets of any person who is subject to a cease and desist order, permanent or temporary injunction, restraining order, or writ of mandamus.

History: **En. Sec. 27, Ch. 444, L. 1987.**

Cross-References

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20).

Injunctions, Title 27, ch. 19.

37-53-506. Criminal proceedings. The board may refer evidence concerning violations of this chapter to the attorney general or the proper prosecuting attorney, who may institute appropriate criminal proceedings.

History: En. Sec. 28, Ch. 444, L. 1987.

CHAPTER 54

REAL ESTATE APPRAISERS

Part 1 — General

37-54-101. Short title.
37-54-102. Definitions.
37-54-103 and 37-54-104 reserved.
37-54-105. Powers and duties of board.
37-54-106 through 37-54-109 reserved.
37-54-110. Roster of licensed and certified real estate appraisers.
37-54-111. Certificate of good standing.
37-54-112. Deposit of fees.

Part 2 — Licensure

37-54-201. Real estate appraiser license — scope and display of license.
37-54-202. Qualifications for licensure.
37-54-203. Course of study.
37-54-204 through 37-54-209 reserved.
37-54-210. License renewal — continuing education requirements.
37-54-211. Late renewal of license.

Part 3 — Certification

37-54-301. Certification — use of term — standards of practice.
37-54-302. Certification process — fees.
37-54-303. Classes of certification — education and experience requirements.
37-54-304. Certification examination.
37-54-305. Issuance and display of certificate.
37-54-306 through 37-54-309 reserved.
37-54-310. Renewal of certificate — continuing education requirements.
37-54-311. Late renewal of certificate.

Part 4 — Regulation of Practice

37-54-401. Complaints and investigations — penalties.
37-54-402. Denial, suspension, or revocation of license or certificate.
37-54-403. Standards of professional appraisal practice.
37-54-404 and 37-54-405 reserved.
37-54-406. Licensure and certification of nonresidents — temporary permit — service of process.
37-54-407 through 37-54-410 reserved.
37-54-411. Classification of services.
37-54-412. Collection of appraisal fees.
37-54-413 and 37-54-414 reserved.
37-54-415. Place of business.
37-54-416. Retention of records.
37-54-417. Reciprocity — consent to service of process.

Part 1

General

37-54-101. Short title. This chapter may be cited as the "Real Estate Appraiser Licensing and Certification Act".

History: En. Sec. 1, Ch. 409, L. 1991.

37-54-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Appraisal" or "real estate appraisal" means an analysis, opinion, or conclusion relating to the nature, quality, value, or utility of a specified interest in or aspects of identified real estate.

(2) "Appraisal assignment" means an appraisal classified by the nature of the assignment as:

(a) a valuation appraisal, which is an analysis, opinion, or conclusion prepared by a real estate appraiser that estimates the value of an identified parcel of real estate or identified real property at a particular point in time;

(b) an analysis assignment, which is an analysis, opinion, or conclusion prepared by a real estate appraiser that relates to the nature, quality, or utility of identified real estate or identified real property; or

(c) a review assignment, which is an analysis, opinion, or conclusion prepared by a real estate appraiser that forms an opinion as to the adequacy and appropriateness of a valuation appraisal.

(3) "Appraisal foundation" means the appraisal foundation incorporated as an Illinois not-for-profit corporation on November 30, 1987. The purposes of the appraisal foundation are to:

(a) establish and improve uniform appraisal standards by defining, issuing, and promoting those standards;

(b) establish appropriate criteria for the certification and recertification of qualified appraisers by defining, issuing, and promoting qualification criteria and disseminate the qualification criteria to states and other governmental entities; and

(c) develop or assist in the development of appropriate examinations for qualified appraisers.

(4) "Appraisal report" means a written or oral communication of a real estate appraisal. An appraisal report for a federally related transaction must be in writing. An appraisal report may be classified by the nature of the assignment as a "valuation report", an "analysis report", or a "review report". For the purposes of this chapter, testimony of a licensed or certified real estate appraiser dealing with the appraiser's analyses, opinions, or conclusions concerning identified real estate or identified real property is considered an oral appraisal report.

(5) "Board" means the board of real estate appraisers provided for in 2-15-1868.

(6) "Certified appraisal report" means an appraisal or appraisal report given or signed and certified by a certified real estate appraiser. When identifying an appraisal or appraisal report as "certified", the certified real estate appraiser shall indicate the class of certification the appraiser holds.

(7) "Certified real estate appraiser" means a person who develops and communicates real estate appraisals and who has a valid real estate appraisal certificate issued under 37-54-305.

(8) "Department" means the department of commerce provided for in 2-15-1801.

(9) "Independent appraisal service" means an engagement for which a person is employed or retained to act, or would be perceived by a third party or the public as acting, as a disinterested third party in rendering an unbiased analysis, opinion, or conclusion relating to the nature, quality, value, or utility of identified real estate or identified real property.

(10) "Licensed real estate appraiser" means a person who holds a current valid real estate appraiser license issued under 37-54-201.

(11) "Real estate" means an identified parcel or tract of land, including any improvements on the land.

(12) "Real property" means one or more defined interests, benefits, and rights inherent in the ownership of real estate.

History: **En. Sec. 2, Ch. 409, L. 1991.**

37-54-103 and 37-54-104 reserved.

37-54-105. Powers and duties of board. The board shall:

(1) adopt rules to implement and administer the provisions of this chapter;

(2) establish and collect fees commensurate with the costs of licensure and certification and renewal of a license or certificate;

(3) make available application forms for licensure and certification within 15 days of the first meeting of the board;

(4) establish minimum requirements for education, experience, and examination for licensure and certification as set out by the appraisal qualification board of the appraisal foundation;

(5) receive applications for examination from qualified applicants, prescribe and administer examinations to qualified applicants, and determine the acceptable level of performance on examinations;

(6) receive and review applications for licensure and certification and issue licenses and certificates;

(7) review periodically the standards for development and communication of appraisals and adopt rules explaining and interpreting the standards;

(8) retain all applications and other records submitted to it;

(9) maintain a registry of the names and addresses of licensees and certificate holders;

(10) establish disciplinary procedures for reprimand, suspension, or revocation of a license and certificate;

(11) adopt by rule standards of professional appraisal practice in this state;

(12) reprimand, suspend, revoke, or refuse to renew the license or certificate of a person who has violated the standards established for licensed and certified real estate appraisers;

(13) establish criteria for courses and seminars consistent with the continuing education requirements set out in 37-54-210 and 37-54-310; and

(14) perform other duties necessary to implement this chapter.

History: En. Sec. 4, Ch. 409, L. 1991.

37-54-106 through 37-54-109 reserved.

37-54-110. Roster of licensed and certified real estate appraisers. The board shall prepare and issue at least once each calendar year a roster listing the name and principal place of business of each real estate appraiser currently licensed or certified under this chapter. A member of the public may obtain a copy of the roster by applying to the board. The board may set a reasonable fee for the cost of providing the roster.

History: En. Sec. 26, Ch. 409, L. 1991.

37-54-111. Certificate of good standing. The board may issue a certificate of good standing to any licensed or certified real estate appraiser who holds a current valid license or certificate in this state.

History: En. Sec. 27, Ch. 409, L. 1991.

37-54-112. Deposit of fees. Fees collected by the board under this chapter must be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6), and may be used to pay the compensation of board members and other expenses necessary to administer this chapter.

History: En. Sec. 22, Ch. 409, L. 1991.

Part 2

Licensure

37-54-201. Real estate appraiser license — scope and display of license. (1) Upon proof that an applicant meets the qualifications set out in 37-54-202 and upon payment of license fees adopted under 37-54-105, the board shall issue to the applicant a real estate appraiser license.

(2) The term “licensed real estate appraiser” may not be used to describe a firm, partnership, corporation, group, or anyone other than an individual licensee. However, a licensed real estate appraiser may engage in real estate appraisal as a professional corporation.

(3) Nothing in this chapter precludes a person who is not a licensed or certified real estate appraiser from appraising real property for nonfederally related transactions for compensation, provided the person does not represent himself as a licensed or certified real estate appraiser. A person who refers to himself or his company as being licensed under this section or certified under 37-54-302 through 37-54-304 without possessing the applicable license or certificate is guilty of a misdemeanor.

(4) This section does not:

(a) prohibit a person who is licensed to practice in this state under any law from engaging in the practice for which he is licensed;

(b) apply to public officials in the conduct of their official duties that are not governed by the rules established by the Federal Financial Institutions Examination Council (FFIEC) agencies.

(5) A licensed real estate appraiser has restrictions on the scope of practice, depending on the value and complexity of the federally related transaction or transactions pursuant to rules established by the federal financial institutions examination council (FFIEC) agencies, and the restrictions must remain current with any changes in those rules.

(6) A licensed real estate appraiser shall conspicuously display the license in his principal place of business.

History: **En. Sec. 5, Ch. 409, L. 1991.**

37-54-202. Qualifications for licensure. To qualify for a real estate appraiser license, an applicant:

(1) shall successfully complete at least 75 classroom hours of a course of study described in 37-54-203 and approved by the board.

(a) The course of study must be conducted by:

(i) an accredited university, college, or junior college;

(ii) an approved real estate appraisal or real estate-related organization; or

(iii) another school approved by the board.

(b) The classroom hours must include:

(i) at least 60 hours relating to the basic principles of land economics and real estate appraisal; and

(ii) at least 15 hours relating to the standards of professional appraisal practice set out in 37-54-403 and the ethical rules, as established by board rule, to be observed by a real estate appraiser.

(2) shall pass an examination administered by the board that is based on the study required by 37-54-203 and subsection (1) of this section and is designed to test the applicant's knowledge of the basic principles of land economics and real estate appraisal, standards of professional appraisal practice, and ethical rules to be observed by a real estate appraiser;

(3) must be of good moral character;

(4) must have experience in real estate appraisal as prescribed by the board. The board shall adopt rules pertaining to real estate appraisal experience that substantially comply with and are not more stringent than those required for compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(5) shall comply with any other requirements related to the practice of real estate appraisal as prescribed by the board by rule.

History: **En. Sec. 6, Ch. 409, L. 1991.**

37-54-203. Course of study. A course of study acceptable under 37-54-202 must include the following subjects:

(1) technical terms commonly used in or related to:

(a) real estate appraisal;

(b) appraisal report writing; and

(c) economic concepts applicable to real estate;

(2) basic principles of land economics and real estate appraisal;

(3) problems likely to be encountered in gathering, interpreting, and processing data required in the real estate appraisal process;

(4) standards for the development and communication of real estate appraisals as provided in this chapter;

(5) ethical rules that a real estate appraiser is required to observe;

(6) (a) theories of depreciation and cost estimating;

(b) methods of capitalization; and

(c) the mathematics of real estate appraisal;

(7) basic real estate law; and

(8) types of misconduct for which disciplinary proceedings may be initiated against a licensed real estate appraiser, as set forth in this chapter.

History: En. Sec. 7, Ch. 409, L. 1991.

37-54-204 through 37-54-209 reserved.

37-54-210. License renewal — continuing education requirements. (1) A real estate appraiser's license expires on March 31 following the date of issuance or renewal and is invalid thereafter.

(2) A licensee may renew a license, other than a temporary permit issued under 37-54-406, by filing an application with the board on a form approved by the board, paying a renewal fee prescribed by the board, and meeting all requirements of this section.

(3) In renewing a license, the board shall assure that the licensee has a working knowledge of:

(a) current real estate appraisal theories; and

(b) practices and techniques that will enable the licensee to provide competent independent appraisal service under the authority of the license.

(4) An application for renewal must include evidence satisfactory to the board that within the 3-year period immediately following the date of issuance of the license and within each 3-year period thereafter, the licensee has completed at least 45 classroom hours of instruction in courses or seminars approved by the board, at least 15 hours of which must be related to standards of professional appraisal practice. Continuing education hours must be credited to the 3-year period during which the instruction occurred and may not be carried over to a subsequent 3-year period.

History: En. Sec. 8, Ch. 409, L. 1991; amd. Sec. 1, Ch. 81, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 81 in (1) substituted "expires on March 1 following the date of issuance or renewal and is invalid thereafter" for "expires 3 years from the date of issuance"; in (4), near middle of first sentence after "immediately", substituted "following the date of issuance of the license and within each 3-year period thereafter" for "preceding the application for renewal" and inserted second sentence disallowing carryover of continuing education hours; and made minor changes in style. Amendment effective February 25, 1993.

Transition: Section 8, Ch. 81, L. 1993, provided: "Until the transition from a 3-year to a 1-year renewal system is completed, a 3-year license or certificate issued under Title 37, chapter 54, in effect on [the effective date of this act] remains in effect until its scheduled time of expiration, at which time fees must be prorated on a monthly basis between the scheduled expiration date and the annual renewal date." Effective February 25, 1993.

37-54-211. Late renewal of license. (1) A license that is not renewed within 1 year of the most recent renewal date automatically terminates. A licensee may renew the license within the 1-year period from the date of most recent renewal by:

(a) filing with the board an application for late renewal on a form approved by the board;

(b) satisfying the continuing education requirements of 37-54-210; and

(c) paying a late renewal fee prescribed by the board.

(2) The board may refuse to renew a license if the licensee has continued to perform independent appraisal services as a licensed real estate appraiser following expiration of the license.

History: En. Sec. 9, Ch. 409, L. 1991; amd. Sec. 2, Ch. 81, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 81 in (1) substituted language concerning license renewal in 1-year period for former language that read: "A licensee who does not renew a license within 3 years from the date of issuance may renew it, within 2 years from the date the license expires". Amendment effective February 25, 1993.

Transition: Section 8, Ch. 81, L. 1993, provided: "Until the transition from a 3-year to a 1-year renewal system is completed, a 3-year license or certificate issued under Title 37, chapter 54, in effect on [the effective date of this act] remains in effect until its scheduled time of expiration, at which time fees must be prorated on a monthly basis between the scheduled expiration date and the annual renewal date." Effective February 25, 1993.

Part 3

Certification

37-54-301. Certification — use of term — standards of practice. (1) A person may not represent himself to be a certified real estate appraiser unless he is certified under this chapter.

(2) Only a certified real estate appraiser may prepare and sign a certified appraisal report relating to real estate or real property in this state. If an appraisal report is prepared, signed, and certified by a certified real estate appraiser, a person licensed under this chapter who assisted in the preparation of the appraisal may cosign the appraisal report.

(3) The term "certified real estate appraiser" may not be used to describe a firm, partnership, corporation, group, or anyone other than an individual certificate holder. However, a certified real estate appraiser may develop and communicate an appraisal on behalf of a firm, partnership, corporation, or group.

History: **En. Sec. 17, Ch. 409, L. 1991.**

37-54-302. Certification process — fees. (1) An application for examination for certification, original certification, or renewal of certification must be made in writing to the board on forms approved by the board.

(2) A fee established by the board by rule must accompany the application.

(3) When an applicant files an application for original certification or renewal of certification, the applicant shall sign a pledge that he will comply with the standards of professional appraisal practice established for certified real estate appraisers under 37-54-403. He shall also affirm that he understands the types of misconduct for which disciplinary action may be initiated against him under 37-54-402.

(4) To be eligible for original certification as a real estate appraiser, an applicant shall:

(a) specify the class or classes of certification for which the applicant is applying and provide evidence satisfactory to the board that he has the education required for the class or classes of certification for which he is applying; and

(b) pass an examination prescribed by the board.

(5) A certificate issued under 37-54-305 must bear the signatures or facsimile signatures of the members of the board and a certificate number assigned by the board.

History: **En. Sec. 18, Ch. 409, L. 1991.**

37-54-303. Classes of certification — education and experience requirements. (1) A real estate appraiser may be certified in one or both of the following classes:

(a) general real estate, which relates to the appraisal of all types of real property;

(b) residential real estate, which relates to the appraisal of expensive or complex 1 to 4 family homes.

(2) The board shall adopt rules pertaining to real estate appraisal education and experience that are at least as stringent as those required for compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

History: En. Sec. 19, Ch. 409, L. 1991; amd. Sec. 3, Ch. 81, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 81 deleted former (1)(b) that read: "agricultural/rural lands, which relates to the appraisal of agricultural and rural lands, including timberlands"; and made minor changes in style. Amendment effective February 25, 1993.

Transition: Section 8, Ch. 81, L. 1993, provided: "Until the transition from a 3-year to a 1-year renewal system is completed, a 3-year license or certificate issued under Title 37, chapter 54, in effect on [the effective date of this act] remains in effect until its scheduled time of expiration, at which time fees must be prorated on a monthly basis between the scheduled expiration date and the annual renewal date." Effective February 25, 1993.

37-54-304. Certification examination. (1) A person who satisfies the qualification requirements of 37-54-202 and the education and experience requirements of 37-54-303 may apply for examination as a certified real estate appraiser in the manner prescribed by this section.

(2) The board shall adopt and administer a written examination for certified real estate appraisers and establish standards of acceptable performance for each class of certification that are at least as stringent as those required for compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(3) An applicant must be examined on the following subjects:

(a) technical terms commonly used in or related to:

(i) real estate appraisal;

(ii) appraisal report writing; and

(iii) economic concepts applicable to real estate;

(b) principles of land economics, real estate law, and real estate appraisal processes;

(c) problems likely to be encountered in gathering, interpreting, and processing data required for developing and communicating an appraisal;

(d) standards for the development and communication of certified real estate appraisals;

(e) (i) theories of depreciation and cost estimating;

(ii) methods of capitalization; and

(iii) the mathematics of real estate appraisal appropriate to the class or classes of certification sought by the applicant; and

(f) types of misconduct for which disciplinary action may be initiated under this chapter.

(4) Examinations must be given at least four times each year at times and places as the board determines.

(5) An applicant may not retake the examination within 6 months after having failed it a second or subsequent time.

History: En. Sec. 20, Ch. 409, L. 1991; amd. Sec. 4, Ch. 81, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 81 in (4), after "year", deleted "in Helena and" and before "times" deleted "other". Amendment effective February 25, 1993.

Transition: Section 8, Ch. 81, L. 1993, provided: "Until the transition from a 3-year to a 1-year renewal system is completed, a 3-year license or certificate issued under Title 37, chapter 54, in effect on [the effective date of this act] remains in effect until its scheduled time of expiration, at which time fees must be prorated on a monthly basis between the scheduled expiration date and the annual renewal date." Effective February 25, 1993.

37-54-305. Issuance and display of certificate. (1) The board shall issue a certificate and a pocket card to a person who meets the requirements of 37-54-302 through 37-54-304.

(2) The certificate must include the dates of issuance and renewal of certification.

(3) A certified real estate appraiser shall conspicuously display the certificate in his principal place of business.

(4) A certified real estate appraiser shall designate the class for which he is certified and place his certificate number on each appraisal report, contract, or other instrument used by him in conducting real estate appraisal activities.

History: En. Sec. 21, Ch. 409, L. 1991.

37-54-306 through 37-54-309 reserved.

37-54-310. Renewal of certificate — continuing education requirements. (1) A certificate issued under 37-54-305 expires on March 31 following the date of issuance or renewal and is invalid thereafter.

(2) A certificate may be renewed upon payment of a renewal fee.

(3) (a) The certificate holder shall produce evidence satisfactory to the board that during the 3-year period immediately following the date of issuance of the certificate, and during each 3-year period thereafter, the certified real estate appraiser has:

(i) completed at least 45 classroom hours of instruction in courses or seminars approved by the board, at least 15 hours of which must be related to standards of professional appraisal practice;

(ii) completed an education program determined by the board to be equivalent to the courses and seminars approved under subsection (3)(a)(i); or

(iii) participated, other than as a student, in an education program approved by the board that relates to the theory and technique of real property appraisal.

(b) Continuing education hours must be credited to the 3-year period during which the instruction occurred and may not be carried over to a subsequent 3-year period.

(4) An applicant for renewal shall state the class of certification previously held and presently sought.

History: En. Sec. 24, Ch. 409, L. 1991; amd. Sec. 5, Ch. 81, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 81 in (1), at end, substituted "expires on March 31 following the date of issuance or renewal and is invalid thereafter" for "must be renewed every 3 years"; in (3)(a), before "period", substituted "3-year" for "certification" and after "immediately" substituted "following the date of issuance of the certificate, and during each 3-year period thereafter" for "preceding the application for renewal"; in (3)(a)(ii) substituted "subsection (3)(a)(i)" for "subsection (2)(a)"; inserted (3)(b) disallowing carryover of continuing education hours; and made minor changes in style. Amendment effective February 25, 1993.

Transition: Section 8, Ch. 81, L. 1993, provided: "Until the transition from a 3-year to a 1-year renewal system is completed, a 3-year license or certificate issued under Title 37, chapter 54, in effect on [the effective date of this act] remains in effect until its scheduled time of expiration, at which time fees must be prorated on a monthly basis between the scheduled expiration date and the annual renewal date." Effective February 25, 1993.

37-54-311. Late renewal of certificate. (1) A certificate that is not renewed within 1 year of the most recent renewal date automatically terminates. A certificate holder may renew the certificate within the 1-year period from the date of most recent renewal by:

(a) filing with the board an application for late renewal on a form approved by the board;

(b) satisfying the continuing education requirements of 37-54-310; and

(c) paying a late renewal fee prescribed by the board.

(2) The board may refuse to renew a certificate if the certificate holder has continued to perform independent appraisal services in this state following expiration of the certificate.

History: En. Sec. 25, Ch. 409, L. 1991; amd. Sec. 6, Ch. 81, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 81 in (1) substituted language concerning renewal of certificate for former language that read: "A certificate holder who does not renew a certificate within 3 years from the date of issuance may renew it, within 2 years from the date the certificate expires". Amendment effective February 25, 1993.

Transition: Section 8, Ch. 81, L. 1993, provided: "Until the transition from a 3-year to a 1-year renewal system is completed, a 3-year license or certificate issued under Title 37, chapter 54, in effect on [the effective date of this act] remains in effect until its scheduled time of expiration, at which time fees must be prorated on a monthly basis between the scheduled expiration date and the annual renewal date." Effective February 25, 1993.

Part 4

Regulation of Practice

37-54-401. Complaints and investigations — penalties. (1) The board may, upon its own motion, and shall, upon the written complaint of an aggrieved person, investigate an alleged violation of this chapter by a licensee or applicant for licensure in this state. If the investigation discloses a probable violation of this chapter, the board shall file a formal complaint against the licensee or applicant.

(2) If after a contested case hearing held pursuant to Title 2, chapter 4, part 6, the board determines that a licensee or applicant has violated a provision of this chapter, the board shall:

(a) deny an application or suspend or revoke a license;

(b) issue a formal reprimand to the licensee or applicant;

(c) impose upon the licensee or applicant a fine not to exceed $500; or

(d) impose any combination of penalties set out in subsections (2)(a) through (2)(c).

(3) The penalties provided in subsection (2) do not apply to a person convicted under 37-54-201(3).

History: **En. Sec. 10, Ch. 409, L. 1991.**

37-54-402. Denial, suspension, or revocation of license or certificate. (1) The board may refuse to issue a license or certificate to an applicant or may revoke, suspend, or refuse to renew the license or certificate of a licensee if the licensee or applicant:

(a) procures or attempts to procure a license or certificate under this chapter:

(i) through fraud;

(ii) by knowingly making a false statement;

(iii) by submitting false information; or

(iv) by making a material misrepresentation in an application filed with the board;

(b) pays money other than fees to any member or employee of the board or department to procure a license or certificate under this chapter;

(c) commits or omits any act in the practice of real estate appraisal that constitutes dishonesty, fraud, or misrepresentation with the intent to substantially benefit the licensee or another person or substantially injure another person;

(d) has entered against him a final civil or criminal judgment on grounds of fraud, misrepresentation, or deceit in the making of a real estate appraisal;

(e) is convicted of a crime that is substantially related to the qualifications, functions, or duties of a person engaging in real estate appraisals;

(f) engages in the business of real estate appraisal under an assumed or fictitious name not properly registered in the state of jurisdiction;

(g) pays a finder's fee or referral fee in connection with a real estate appraisal in this state to a person who does not have a real estate appraiser's license in this state;

(h) makes a false or misleading statement in that portion of the written appraisal report that deals with professional qualifications or in any testimony concerning professional qualifications;

(i) violates any section of this chapter or any rule promulgated under this chapter;

(j) violates the confidential nature of governmental records to which he gained access through employment or engagement as a real estate appraiser by a governmental agency; or

(k) accepts a fee for performing an independent appraisal service if the employment or fee is contingent upon:

(i) the appraiser reporting a predetermined estimate, valuation, analysis, opinion, or conclusion; or

(ii) the consequences resulting from the appraisal.

(2) In a disciplinary proceeding based on a civil judgment, a licensee may not collaterally attack the judgment but must be allowed to present matters in mitigation or extenuation.

(3) Denial, suspension, or revocation of a license or certificate is permissible only after a hearing and procedures that comply with the applicable requirements of Title 2, chapter 4.

History: **En. Sec. 14, Ch. 409, L. 1991.**

37-54-403. Standards of professional appraisal practice. (1) A licensed or certified real estate appraiser shall comply with generally accepted standards of professional appraisal practice, evidenced by the uniform standards of professional appraisal practice promulgated by the appraisal standards board of the appraisal foundation.

(2) If the appraisal standards board of the appraisal foundation modifies the standards or issues supplemental standards that it considers appropriate for all classes of real estate appraisers, the modification is automatically adopted as observable in this state unless the board determines that a public hearing is necessary to determine whether the modified or supplemented standards must be observed in this state. If following the hearing the board determines the modified or supplemented standards are appropriate, the board shall adopt the standards by rule.

History: En. Sec. 13, Ch. 409, L. 1991; amd. Sec. 7, Ch. 81, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 81 in (2), near end of first sentence after "appraisers", substituted "the modification is automatically adopted as observable in this state unless the board determines that a public hearing is necessary" for "and requests the board to consider the adoption of the modifications or supplements, the board shall conduct a public hearing". Amendment effective February 25, 1993.

Transition: Section 8, Ch. 81, L. 1993, provided: "Until the transition from a 3-year to a 1-year renewal system is completed, a 3-year license or certificate issued under Title 37, chapter 54, in effect on [the effective date of this act] remains in effect until its scheduled time of expiration, at which time fees must be prorated on a monthly basis between the scheduled expiration date and the annual renewal date." Effective February 25, 1993.

37-54-404 and 37-54-405 reserved.

37-54-406. Licensure and certification of nonresidents — temporary permit — service of process. (1) A person not a resident of this state who has complied with the provisions of subsection (3) may obtain a license or certificate as a real estate appraiser in this state by complying with the provisions of this chapter relating to the licensure or certification of real estate appraisers.

(2) (a) A person not a resident of this state who has complied with the consent provisions of subsection (3) may obtain a temporary permit to perform a contract relating to the appraisal of real estate or real property in this state. To qualify for a temporary permit, an applicant shall:

(i) submit an application to the board on a form approved by the board;

(ii) submit evidence that the applicant is licensed or otherwise authorized to appraise real estate or real property in the applicant's domicile state;

(iii) submit a copy of the contract for appraisal services that requires the applicant to appraise real estate or real property in this state and certify that the contract is in force and effect;

(iv) certify that no disciplinary proceeding is pending against the applicant in the applicant's domicile state;

(v) pay an application fee in an amount prescribed by the board; and

(vi) comply with the other requirements established by the board.

(b) A temporary permit issued under this section is limited to a grant of authority to perform independent appraisal services required by the contract for appraisal services submitted with the application for a temporary permit.

(c) A temporary permit expires upon completion of the appraisal services under the contract or 6 months after issuance of the temporary permit, whichever is earlier. A temporary permit may not be renewed.

(3) An applicant for licensure or certification under this chapter who is not a resident of this state shall submit, with his application for licensure or certification, an irrevocable consent that service of process upon the applicant may be made by delivery of the process to the secretary of state of this state if, in an action against the applicant in a court in this state arising out of the applicant's activities as a licensed or certified real estate appraiser in this state, the plaintiff cannot effect personal service upon the applicant in the exercise of due diligence.

History: En. Sec. 28, Ch. 409, L. 1991.

37-54-407 through 37-54-410 reserved.

37-54-411. Classification of services. (1) A client or employer may retain or employ a licensed or certified real estate appraiser to:

(a) act as a disinterested third party in rendering an unbiased analysis, opinion, conclusion, or estimate of value; or

(b) provide specialized appraisal services to facilitate the client's or employer's objectives.

(2) In either instance described in subsection (1), the appraisal and appraisal report must comply with the provisions of this chapter.

History: En. Sec. 16, Ch. 409, L. 1991.

37-54-412. Collection of appraisal fees. A person who performs independent appraisal services as a licensed or certified real estate appraiser in this state may not bring an action in any court in this state to collect compensation for the performance of those services unless he alleges and proves that he held a valid license or certificate at all times during the performance of those services.

History: En. Sec. 12, Ch. 409, L. 1991.

37-54-413 and 37-54-414 reserved.

37-54-415. Place of business. (1) A resident licensed or certified real estate appraiser shall maintain a principal place of business in this state. If the appraiser changes his principal place of business, he shall promptly notify the board in writing of the change. Upon receipt of notice of the change, the board shall issue a new license or certificate for the unexpired term, stating the principal place of business.

(2) A nonresident licensee is not required to maintain a place of business in this state if he maintains a principal place of business in his domicile state.

History: En. Sec. 11, Ch. 409, L. 1991.

37-54-416. Retention of records. (1) A licensed or certified real estate appraiser shall retain for 5 years from the date of submission of an appraisal report to a client:

(a) an original or true copy of any written contract engaging his services as an appraiser;

(b) an appraisal report prepared or signed by the licensed or certified real estate appraiser; and

(c) all supporting data assembled and formulated by the licensed or certified real estate appraiser in preparing the appraisal report.

(2) If a licensed or certified real estate appraiser is notified within this 5-year period that the appraisal report is involved in litigation, the appraiser shall retain the appraisal report for 5 years from the final date of disposition of the litigation.

(3) The licensed or certified real estate appraiser shall make available to the board at reasonable times, for inspection and copying, any appraisal report he is required to maintain under the provisions of this section.

History: En. Sec. 15, Ch. 409, L. 1991.

37-54-417. Reciprocity — consent to service of process. (1) A person who holds a valid real estate appraiser's license or certificate in a state that grants reciprocity to Montana real estate appraisers and that has substantially equivalent licensure or certification requirements to this state may be licensed or certified in this state. The person shall conform to the requirements of this chapter.

(2) In addition, an applicant for reciprocity under this section shall submit an irrevocable consent that in any action against the applicant arising out of the applicant's activities as a real estate appraiser licensed or certified by this state, service of process may be made upon him by delivery of the process to the secretary of state of this state if the plaintiff cannot effect personal service upon the applicant in the exercise of due diligence.

History: En. Sec. 23, Ch. 409, L. 1991.

CHAPTERS 55 THROUGH 59

RESERVED

CHAPTER 60

PRIVATE INVESTIGATORS AND PATROL OFFICERS

Part 1 — General

37-60-101. Definitions.
37-60-102. Repealed.
37-60-103. Purpose.
37-60-104. Restrictions on contract security company and proprietary security organization.
37-60-105. Exemptions.

Part 2 — Director of Department — Board

37-60-201. Organization — meetings — records.
37-60-202. Rulemaking power.
37-60-203 through 37-60-210 reserved.
37-60-211. Compensation of board members — expenses.
37-60-212. Attorney general to act as attorney for the board.

Part 3 — Licensing

37-60-301. License required.
37-60-302. Qualifying agent and resident manager required — substitution.

37-60-303. License qualifications.
37-60-304. Licenses — application form and content.
37-60-305. Repealed.
37-60-306. Repealed.
37-60-307. Action on application.
37-60-308. Temporary employment without identification card — authority of board.
37-60-309. Form of license and identification card.
37-60-310. Display of license and identification card.
37-60-311. Repealed.
37-60-312. Annual renewal.
37-60-313. Repealed.
37-60-314. Nontransferability of license — record changes.
37-60-315 through 37-60-319 reserved.
37-60-320. Fees.
37-60-321. Suspension or revocation.
37-60-322. Surrender of licenses and identification cards.

Part 4 — Provisions Regulating Practice

37-60-401. Responsibility of licensee for conduct of employees.
37-60-402. Confidentiality of information — false reports — badges and uniforms — illegal entry.
37-60-403. Licensee advertising.
37-60-404. Duty to maintain employee records.
37-60-405. Approval of weapons.
37-60-406. Peace officer's casual employment.
37-60-407. Regulation of uniforms, badges, and equipment.
37-60-408. Restrictions on use of certain automatic dial-up systems.
37-60-409. Installation of new security alarm systems by electrician.
37-60-410 reserved.
37-60-411. Penalties — investigation — enforcement — review.

Chapter Cross-References

Service of process and other papers, Title 25, ch. 3.

Weapons, Title 45, ch. 8, part 3.

Search and seizure, Title 46, ch. 5.

Arrest, Title 46, ch. 6.

Part 1

General

37-60-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Alarm response runner" means any individual employed by a contract security company or a proprietary security organization to respond to security alarm system signals.

(2) "Armed carrier service" means any person who transports or offers to transport under armed private security guard from one place to another any currency, documents, papers, maps, stocks, bonds, checks, or other items of value that require expeditious delivery.

(3) "Armed private investigator" means a private investigator who at any time wears, carries, possesses, or has access to a firearm in the performance of his duties.

(4) "Armed private security guard" means an individual employed by a contract security company or a proprietary security organization whose duty or any portion of whose duty is that of a security guard, armored car service

guard, carrier service guard, or alarm response runner and who at any time wears or carries a firearm in the performance of his duties.

(5) "Armored car service" means any person who transports or offers to transport under armed private security guard from one place to another any currency, jewels, stocks, bonds, paintings, or other valuables of any kind in a specially equipped motor vehicle that offers a high degree of security.

(6) "Board" means the board of private security patrol officers and investigators provided for in 2-15-1891.

(7) "Branch office" means any office of a licensee within the state, other than its principal place of business within the state.

(8) "Contract security company" means any person who installs or maintains a security alarm system, undertakes to provide a private security guard, alarm response runner, armored car service, street patrol service, or armed carrier service on a contractual basis to another person who exercises no direction and control over the performance of the details of the services rendered.

(9) "Department" means the department of commerce provided for in 2-15-1801.

(10) "Insurance adjuster" means a person employed by an insurance company, other than a private investigator, who for any consideration whatsoever conducts investigations in the course of adjusting or otherwise participating in the disposal of any claims in connection with a policy of insurance but who does not perform surveillance activities or investigate crimes or wrongs committed or threatened against the United States or any state or territory thereof.

(11) "Licensee" means a person licensed under this chapter.

(12) "Paralegal" or "legal assistant" means a person qualified through education, training, or work experience to perform substantive legal work that requires knowledge of legal concepts and that is customarily but not exclusively performed by a lawyer and who may be retained or employed by one or more lawyers, law offices, governmental agencies, or other entities or who may be authorized by administrative, statutory, or court authority to perform this work.

(13) "Person" includes any individual, firm, company, association, organization, partnership, and corporation.

(14) "Private investigator" means a person other than an insurance adjuster who for any consideration whatsoever makes or agrees to make any investigation with reference to:

(a) crimes or wrongs done or threatened against the United States or any state or territory thereof;

(b) the identity, habits, conduct, business, occupation, honesty, integrity, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, reputation, or character of any person;

(c) the location, disposition, or recovery of lost or stolen property;

(d) the cause or responsibility for fires, libels, losses, accidents, or injury to persons or property; or

(e) securing evidence to be used before any court, board, officer, or investigating committee.

(15) "Private security guard" means an individual employed or assigned duties to protect a person or property or both a person and property from criminal acts and whose duties or any portion of whose duties include but are not limited to the prevention of unlawful entry, theft, criminal mischief, arson, or trespass on private property, or the direction of the movements of the public in public areas.

(16) "Proprietary security organization" means any person who employs a private security guard, an alarm response runner, armored car service, street patrol service, or armed carrier service on a routine basis solely for the purposes of that person and exerts direction and control over the performance of the details of the service rendered.

(17) "Qualifying agent" means, in the case of a corporation, a corporate employee employed in a management capacity or, in the case of a partnership, a general or unlimited partner meeting the qualifications set forth in this chapter for the operation of a contract security company, proprietary security organization, or private investigator, whichever is applicable.

(18) "Resident manager" means the person appointed to exercise direct supervision, control, charge, management, or operation of each branch office located in this state where the business of the licensee is conducted.

(19) "Security alarm system" means an assembly of equipment and devices or a single device such as a solid state unit which plugs directly into a 110-volt AC line, designed to detect or signal or to both detect and signal unauthorized intrusion, movement, or criminal acts at a protected premises, to which signals police, private security guards, or alarm response runners are expected to respond. Fire alarm systems and alarm systems that monitor temperature, humidity, or any other atmospheric condition not directly related to the detection of an unauthorized intrusion or criminal act at a premises are not included within the meaning of this definition.

(20) "Street patrol service" means any contract security company or proprietary security organization that uses foot patrols, motor vehicles, or any other means of transportation to maintain public order or detect criminal activities in public areas or thoroughfares.

(21) "Unarmed private investigator" means a private investigator who does not wear, carry, possess, or have access to a firearm in the performance of his duties.

(22) "Unarmed private security guard" means an individual employed by a contract security company or a proprietary security organization whose duty or any portion of whose duty is that of a private security guard, armored car service guard, or alarm response runner, who does not wear or carry a firearm in the performance of those duties.

History: En. 66-3301 by Sec. 1, Ch. 234, L. 1974; R.C.M. 1947, 66-3301; amd. Sec. 15, Ch. 274, L. 1981; amd. Sec. 2, Ch. 550, L. 1983; amd. Sec. 1, Ch. 647, L. 1985; amd. Sec. 1, Ch. 63, L. 1987; amd. Sec. 50, Ch. 83, L. 1989; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 1, Ch. 332, L. 1989; amd. Sec. 1, Ch. 47, L. 1991.

Cross-References

Libel and slander, Title 27, ch. 1, part 8.

Criminal mischief and arson, Title 45, ch. 6, part 1.

Criminal trespass and burglary, Title 45, ch. 6, part 2.

Theft and related offenses, Title 45, ch. 6, part 3.

37-60-102. Repealed. Sec. 34, Ch. 550, L. 1983.

History: En. 66-3305 by Sec. 5, Ch. 234, L. 1974; R.C.M. 1947, 66-3305(1).

37-60-103. Purpose. The purpose of this chapter is to increase the levels of integrity, competency, and performance of private security personnel and private investigators in order to safeguard the public health, safety, and welfare against illegal, improper, or incompetent actions committed by private security personnel or private investigators.

History: En. 66-3305 by Sec. 5, Ch. 234, L. 1974; R.C.M. 1947, 66-3305(2); amd. Sec. 3, Ch. 550, L. 1983.

37-60-104. Restrictions on contract security company and proprietary security organization. No employee of a contract security company or proprietary security organization may make any investigation or investigations except those that are incidental to the theft, loss, embezzlement, misappropriation, or concealment of any property or any other thing which he has been hired or engaged to protect, guard, or watch.

History: En. 66-3305 by Sec. 5, Ch. 234, L. 1974; R.C.M. 1947, 66-3305(3); amd. Sec. 4, Ch. 550, L. 1983.

Cross-References

Theft and related offenses, Title 45, ch. 6, part 3.

37-60-105. Exemptions. This chapter does not apply to:

(1) (a) any one person employed singly and exclusively by any one employer in connection with the affairs of such employer only and where there exists an employer-employee relationship and the employee is unarmed, does not wear a uniform, and is guarding inside a structure which at the time is not open to the public;

(b) a person:

(i) employed singly and exclusively by a retail merchant;

(ii) performing at least some of his work for the retail merchant as a private security guard; and

(iii) who has received training as a private security guard from the employer or at the employer's direction;

(2) an officer or employee of the United States of America or of this state or a political subdivision thereof while such officer or employee is engaged in the performance of his official duties;

(3) a person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons or as to the personal habits and financial responsibility of applicants for insurance, indemnity bonds, or commercial credit;

(4) (a) an attorney at law in performing his duties as an attorney at law;

(b) a legal intern, paralegal, or legal assistant employed by one or more lawyers, law offices, governmental agencies, or other entities; or

(c) a law student who is serving a legal internship;

(5) a collection agency or finance company licensed to do business under the laws of this state, or an employee thereof while acting within the scope of his employment, while making an investigation incidental to the business of the agency or company, including an investigation of the location of a debtor or his property where the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent thereof;

(6) special agents employed by railroad companies, provided the railroad company notifies the board that such agents are operating in the state;

(7) insurers and insurance producers and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them;

(8) an insurance adjuster, as defined by 37-60-101(10); or

(9) an internal investigator or auditor, while making an investigation incidental to the business of the agency or company by which he is singularly and regularly employed.

History: En. 66-3306 by Sec. 6, Ch. 234, L. 1974; R.C.M. 1947, 66-3306; amd. Sec. 5, Ch. 550, L. 1983; amd. Sec. 2, Ch. 647, L. 1985; amd. Sec. 2, Ch. 63, L. 1987; amd. Sec. 2, Ch. 332, L. 1989; amd. Sec. 2, Ch. 47, L. 1991.

Cross-References

Consumer reporting agencies, Title 31, ch. 3, part 1.

Insurance producers, adjusters, consultants, and administrators, Title 33, ch. 17.

Part 2

Director of Department — Board

Part Cross-References

Duties and powers of Department heads, 2-15-112.

Board of private security patrol officers and investigators created, 2-15-1891.

Duties of director, 37-1-121.

37-60-201. Organization — meetings — records. The board shall meet annually and shall elect from among the seven members a president and a secretary. The board shall hold other meetings when necessary to transact its business. A majority of the board constitutes a quorum at any meeting. The department shall keep complete minutes and records of the meetings and rules and orders promulgated by the board. Copies of records and papers kept by the department, certified by the chairman and authenticated by the seal of the board, shall be received in evidence in courts with like effect as the original. Records of the board are open to public inspection under rules it prescribes.

History: En. 66-3302 by Sec. 2, Ch. 234, L. 1974; R.C.M. 1947, 66-3302; amd. Sec. 6, Ch. 550, L. 1983.

37-60-202. Rulemaking power. The board shall adopt and enforce rules:

(1) specifying the form of and procedure to be used in granting, denying, suspending, or revoking any license or identification card;

(2) fixing the qualifications of resident managers, qualifying agents, licensees, and holders of identification cards, in addition to those prescribed in this chapter, necessary to promote and protect the public welfare;

(3) establishing, in accordance with 37-1-134, application and examination fees for original or renewal licenses and identification cards, and providing for refunding of any such fees;

(4) prohibiting the establishment of branch offices of any licensee, except a proprietary security organization, without approval by the board, establishing qualification requirements and license fees for those offices;

(5) for the certification of private investigator and private security guard training programs, including the certification of firearms training programs and firearms instructors;

(6) for the approval of weapons;

(7) requiring the maintenance of records;

(8) requiring licensees to file such insurance policy or proof of financial responsibility as the board considers necessary with the board;

(9) defining "unprofessional conduct" for the purposes of removal from the board and suspension or revocation of licenses and identification cards;

(10) establishing the expiration and renewal periods for licenses and identification cards;

(11) for the temporary employment of persons without the required licenses or identification cards;

(12) providing for the issuance of probationary and temporary licenses for contract security companies and private investigators;

(13) providing for the issuance of probationary identification cards for private investigators who do not meet the requirements for age, employment experience, and written examination; and

(14) providing for the application of administrative fines and penalties for minor infractions of this chapter and supporting rules.

History: En. 66-3303 by Sec. 3, Ch. 234, L. 1974; R.C.M. 1947, 66-3303; amd. Sec. 7, Ch. 550, L. 1983; amd. Sec. 8, Ch. 647, L. 1985; amd. Sec. 3, Ch. 63, L. 1987.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-60-203 through 37-60-210 reserved.

37-60-211. Compensation of board members — expenses. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 8, Ch. 550, L. 1983.

37-60-212. Attorney general to act as attorney for the board. The attorney general shall act as attorney for the board in actions and proceedings brought by or against it under this chapter. Fees and expenses of the attorney general acting in this capacity shall be paid out of board money in the state special revenue fund.

History: En. Sec. 9, Ch. 550, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.

Cross-References

Powers and duties of Attorney General, 2-15-501.

Part 3
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-60-301. License required. (1) Except as provided in 37-60-105, it is unlawful for any person to act as or perform the duties as defined in 37-60-101 of a contract security company or proprietary security organization, a private investigator, or a private security guard without having first obtained a license from the board. Those persons licensed on April 18, 1983, shall retain their current licensure status and must renew their licenses on the renewal date as prescribed by the board.

(2) It is unlawful for any unlicensed person to act as, pretend to be, or represent himself as being licensed as a private investigator, a contract security company, a proprietary security organization, or a private security guard.

(3) A person who knowingly engages an unlicensed private investigator, private security guard, or contract security company is guilty of a misdemeanor punishable under 37-60-411.

History: En. 66-3304 by Sec. 4, Ch. 234, L. 1974; R.C.M. 1947, 66-3304; amd. Sec. 10, Ch. 550, L. 1983; amd. Sec. 4, Ch. 63, L. 1987.

Cross-References

Licensing investigation and review — record access, 37-1-135.

37-60-302. Qualifying agent and resident manager required — substitution. (1) Any person not a resident of this state who applies for a license under this chapter shall, before application to the board, appoint for the duration of the license a qualifying agent and a resident manager. Every qualifying agent and resident manager shall satisfy the appropriate licensing requirements of this chapter.

(2) A resident manager must be appointed for each branch office located in this state, and the business of the applicant or licensee must be conducted under his direct supervision and control.

(3) If a qualifying agent or resident manager for any reason ceases to perform the duties of a qualifying agent or resident manager on a regular basis, the licensee shall promptly notify the board by certified mail of that fact and of the name of a substitute individual, who shall make application to the board for continuation of the license. Pending application by and board action upon the application of the substitute, the board may suspend the license or extend it for a reasonable time.

History: En. 66-3307 by Sec. 7, Ch. 234, L. 1974; R.C.M. 1947, 66-3307; amd. Sec. 11, Ch. 550, L. 1983; amd. Sec. 3, Ch. 647, L. 1985.

37-60-303. License qualifications. (1) Except as otherwise specified in this section, an applicant for licensure under this chapter shall submit evidence under oath that he:

(a) is at least 18 years of age;

(b) is a citizen of the United States;

(c) has not been convicted in any jurisdiction of any felony or any crime involving moral turpitude or illegal use or possession of a dangerous weapon, for which a full pardon or similar relief has not been granted;

(d) has not been judicially declared incompetent by reason of any mental defect or disease or, if so declared, has been fully restored;

(e) is not suffering from habitual drunkenness or from narcotics addiction or dependence;

(f) is of good moral character; and

(g) has complied with such other experience qualifications as may be set by the rules of the board.

(2) In addition to meeting the qualifications in subsection (1), an applicant for licensure as a private security guard shall:

(a) complete the training requirements of a private security guard training program certified by the board and provide, on a form prescribed by the board, written notice of satisfactory completion of such training; and

(b) fulfill such other requirements as the board may by rule prescribe.

(3) In addition to meeting the qualifications in subsection (1), each applicant for a license to act as a private investigator shall submit evidence under oath that he:

(a) is at least 21 years of age;

(b) has at least a high school education or its equivalent;

(c) has not been dishonorably discharged from any branch of the United States military service;

(d) for a period of not less than 3 years:

(i) has been lawfully engaged in the private investigative business;

(ii) has been lawfully employed as a private investigator or been the holder of a certificate of authority to conduct a private investigative business; or

(iii) has been an investigator, detective, special agent, or peace officer of a city, county, or state government or of the United States government;

(e) has completed the training requirements of a private investigator training program certified by the board and furnished, on a form prescribed by the board, written notice of satisfactory completion of such training; and

(f) has fulfilled such other requirements as the board may by rule prescribe.

(4) Up to one-half of the experience required by subsection (3)(d) may be met by a combination of education and training as accepted by the board. All college credits must be from an accredited college or university and be verified by transcript.

(5) Applicants who will wear or carry firearms in performance of their duties shall submit written notice of satisfactory completion of a firearms training program certified by or satisfactory to the board, as it may by rule prescribe.

(6) A corporation applying for a license under this section must be incorporated under the laws of this state or be duly qualified to do business within this state.

(7) The board shall require an applicant to demonstrate by written examination such additional qualifications as the board may by rule require.

History: En. 66-3308 by Sec. 8, Ch. 234, L. 1974; R.C.M. 1947, 66-3308; amd. Sec. 12, Ch. 550, L. 1983; amd. Sec. 4, Ch. 647, L. 1985; amd. Sec. 5, Ch. 63, L. 1987.

Cross-References

Proof of execution, Title 1, ch. 5, part 3.

Power of notary to take acknowledgments, 1-5-416.

Oaths, Title 1, ch. 6.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Carrying or possession of firearms, 37-60-101.

Certification of firearms training programs, 37-60-202.

Approval of weapons, 37-60-405.

Perjury, 45-7-201.

False swearing, 45-7-202.

37-60-304. Licenses — application form and content. (1) Application for a license shall be made on a form prescribed by the board and accompanied by the application fee set by the board.

(2) An application shall be made under oath and shall include:

(a) the full name and address of the applicant;

(b) the name under which the applicant intends to do business;

(c) a statement as to the general nature of the business in which the applicant intends to engage;

(d) a statement as to whether the applicant desires to be licensed as a contract security company, a proprietary security organization, a private investigator, or a private security guard;

(e) two recent photographs of the applicant, of a type prescribed by the board, and two classifiable sets of his fingerprints;

(f) a statement of his age and experience qualifications;

(g) such other information, evidence, statements, or documents as may be prescribed by the rules of the board; and

(h) if the applicant is a person other than an individual, the full name and residence address of each of its partners, officers, and directors and its manager.

(3) The board shall verify the statements in the application and the applicant's moral character. The board shall send written notification to the chief of police, the sheriff, and the county attorney in whose jurisdiction the principal office of the applicant is to be located that an application has been submitted.

History: En. 66-3309 by Sec. 9, Ch. 234, L. 1974; R.C.M. 1947, 66-3309; amd. Sec. 22, Ch. 22, L. 1979; amd. Sec. 13, Ch. 550, L. 1983; amd. Sec. 5, Ch. 647, L. 1985; amd. Sec. 6, Ch. 63, L. 1987.

Cross-References

Oaths, Title 1, ch. 6.
Perjury, 45-7-201.
False swearing, 45-7-202.

37-60-305. Repealed. Sec. 18, Ch. 63, L. 1987.

History: En. 66-3310 by Sec. 10, Ch. 234, L. 1974; R.C.M. 1947, 66-3310; amd. Sec. 14, Ch. 550, L. 1983; amd. Sec. 6, Ch. 647, L. 1985.

37-60-306. Repealed. Sec. 18, Ch. 63, L. 1987.

History: En. 66-3311 by Sec. 11, Ch. 234, L. 1974; R.C.M. 1947, 66-3311; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 15, Ch. 550, L. 1983; amd. Sec. 7, Ch. 647, L. 1985.

37-60-307. Action on application. (1) The board shall grant the application for an original or renewal license or identification card unless it finds that the applicant, branch office manager, or qualifying agent has:

(a) not met the qualifications of 37-60-303;

(b) practiced fraud, deceit, or misrepresentation in the application process;

(c) knowingly made a material misstatement in the application for a license;

(d) violated any of the provisions of this chapter or the rules of the board; or

(e) taken any action warranting suspension or revocation under 37-60-321.

(2) If an original or renewal license or identification card is denied, the applicant may request a hearing within 30 days after receipt of notice of denial. The hearing must be held in accordance with the provisions of the Montana Administrative Procedure Act and the rules of the department of commerce.

(3) Licenses or identification cards must be granted by name for those categories of persons listed in 37-60-101(1), (2), (3), (4), (5), (8), (14), (15), (16), (17), (18), (20), (21), or (22), or any combination of the foregoing.

History: En. 66-3312 by Sec. 12, Ch. 234, L. 1974; R.C.M. 1947, 66-3312; amd. Sec. 16, Ch. 550, L. 1983; amd. Sec. 7, Ch. 63, L. 1987; amd. Sec. 3, Ch. 332, L. 1989.

37-60-308. Temporary employment without identification card — authority of board. The board may, under such conditions as it shall prescribe by rule, authorize the employment by any licensee of any person for not more than 30 days who, because of his failure to obtain an identification card, could otherwise not act as a private security guard or private investigator.

History: En. 66-3313 by Sec. 13, Ch. 234, L. 1974; R.C.M. 1947, 66-3313; amd. Sec. 17, Ch. 550, L. 1983; amd. Sec. 8, Ch. 63, L. 1987; amd. Sec. 51, Ch. 83, L. 1989.

37-60-309. Form of license and identification card. The license and identification card shall be in such form as may be determined by the board.

History: En. 66-3314 by Sec. 14, Ch. 234, L. 1974; R.C.M. 1947, 66-3314; amd. Sec. 18, Ch. 550, L. 1983; amd. Sec. 9, Ch. 63, L. 1987.

37-60-310. Display of license and identification card. (1) A license shall at all times be posted in a conspicuous place in the principal place of business of the licensee.

(2) Any holder of an identification card must carry the card on his person while performing his duties. Any peace officer of this state or any of its political subdivisions may request to see the card at any reasonable time, and the card must be shown.

History: En. 66-3315 by Sec. 15, Ch. 234, L. 1974; R.C.M. 1947, 66-3315; amd. Sec. 20, Ch. 550, L. 1983; amd. Sec. 10, Ch. 63, L. 1987.

37-60-311. Repealed. Sec. 34, Ch. 550, L. 1983.

History: En. 66-3316 by Sec. 16, Ch. 234, L. 1974; R.C.M. 1947, 66-3316.

37-60-312. Annual renewal. (1) Licenses and identification cards issued under this chapter expire at midnight on the dates prescribed by the board if not, in each instance, renewed. To renew an unexpired license, the licensee shall, on or before the date on which it would otherwise expire, apply for renewal on a form prescribed by the board and pay the renewal fee prescribed by this chapter.

(2) The board may refuse to renew a license or identification card for any reason for which it could refuse to grant an original application or suspend or revoke any license or identification card under 37-60-321.

History: En. 66-3329 by Sec. 29, Ch. 234, L. 1974; R.C.M. 1947, 66-3329; amd. Sec. 21, Ch. 550, L. 1983; amd. Sec. 11, Ch. 63, L. 1987.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

37-60-313. Repealed. Sec. 34, Ch. 550, L. 1983.

History: En. 66-3330 by Sec. 30, Ch. 234, L. 1974; amd. Sec. 1, Ch. 42, L. 1975; R.C.M. 1947, 66-3330.

37-60-314. Nontransferability of license — record changes. (1) No license issued under this chapter is transferable.

(2) A licensee shall notify the board within 5 days of any change in its officers or directors or other material change in the information previously

furnished or required to be furnished to the board or any other material change or occurrence that could reasonably be expected to affect the licensee's right to a license. Upon such change or occurrence, the board may suspend or revoke the license or may allow the business to be carried on for a temporary period under terms and conditions as the board may require.

(3) This section may not be applied to restrict the sale of a business if the buyer qualifies for a license under the provisions of this chapter.

History: En. 66-3317 by Sec. 17, Ch. 234, L. 1974; R.C.M. 1947, 66-3317; amd. Sec. 22, Ch. 550, L. 1983.

37-60-315 through 37-60-319 reserved.

37-60-320. Fees. (1) The fees prescribed by the board and collected by the department must be deposited into the state special revenue fund for the use of the board, subject to 37-1-101(6).

(2) The department shall keep an accurate account of funds received and vouchers issued by the department.

History: En. Sec. 19, Ch. 550, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-60-321. Suspension or revocation. The board may suspend or revoke a license or identification card issued under this chapter if it determines that the licensee or its manager or qualifying agent or any of its officers, directors, or partners or any holder of an identification card has:

(1) made any false statement or given any false information in connection with an application for a grant, renewal, or reinstatement of a license or identification card;

(2) violated any provisions of this chapter;

(3) violated any rule of the board adopted pursuant to the authority contained in this chapter;

(4) been convicted of a felony or any crime involving moral turpitude or illegally using, carrying, or possessing a dangerous weapon and as a result of such conviction is under state supervision;

(5) impersonated or permitted or aided and abetted an employee to impersonate a law enforcement officer or employee of the United States of America or of any state or political subdivision thereof;

(6) committed or permitted any employee to commit any act, while the license or identification card was expired, which would be cause for suspension, revocation, or denial of an application;

(7) willfully failed or refused to render to a client services or a report as agreed between the parties and for which compensation has been paid or tendered in accordance with the agreement of the parties;

(8) knowingly violated or advised, encouraged, or assisted the violation of any court order or injunction in the course of business as a licensee or holder of an identification card;

(9) resorted to fraud, misrepresentation, or deception, in the course of business, which was not required to perform a client service; or

(10) been guilty of unprofessional conduct as defined by the rules of the board.

History: En. 66-3327 by Sec. 27, Ch. 234, L. 1974; R.C.M. 1947, 66-3327; amd. Sec. 23, Ch. 550, L. 1983; amd. Sec. 12, Ch. 63, L. 1987.

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Duties of Director in investigation of unethical conduct, 37-1-121.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Weapons, Title 45, ch. 8, part 3.

37-60-322. Surrender of licenses and identification cards. (1) Whenever a license is suspended or revoked, the licensee shall within 24 hours after receiving notification of the suspension or revocation by the board surrender the license by mailing it or delivering it personally to the board.

(2) Whenever any person to whom an identification card has been issued ceases employment for which the card was issued or has his card revoked or suspended by the board, he shall surrender the card within 5 days by mail or personally deliver the card to the board.

History: En. Sec. 24, Ch. 550, L. 1983; amd. Sec. 13, Ch. 63, L. 1987.

Part 4
Provisions Regulating Practice

37-60-401. Responsibility of licensee for conduct of employees. A licensee shall at all times be legally responsible for the good conduct in the business of each employee, including his manager.

History: En. 66-3318 by Sec. 18, Ch. 234, L. 1974; R.C.M. 1947, 66-3318.

Cross-References

Agency, Title 28, ch. 10.

Criminal trespass and burglary, Title 45, ch. 6, part 2.

Impersonating a public servant, 45-7-209.

37-60-402. Confidentiality of information — false reports — badges and uniforms — illegal entry. (1) A licensee or officer, director, partner, or manager of a licensee may divulge to any law enforcement officer or county attorney or his representative any information he may acquire as to any criminal offense, but he may not divulge to any other person, except as required by law, any information acquired by him except at the direction of the employer or client for whom the information was obtained.

(2) No licensee or officer, director, partner, manager, or employee of a licensee may knowingly make any false report to his employer or client for whom information was being obtained.

(3) No written report may be submitted to a client except by the licensee, qualifying manager, or a person authorized by either of them, and the person submitting the report shall exercise diligence in ascertaining whether or not the facts and information in the report are true and correct.

(4) No licensee or officer, director, partner, manager, or employee of a licensee may use a title, wear a uniform, use an identification card, or make any statement with the intent to give an impression that he is connected in any way with the federal government, a state government, or any political subdivision of a state government.

(5) No licensee or officer, director, partner, manager, or employee of a licensee may enter any private building or portion thereof without the consent of the owner or of the person in legal possession thereof.

History: En. 66-3319 by Sec. 19, Ch. 234, L. 1974; amd. Sec. 29, Ch. 101, L. 1977; R.C.M. 1947, 66-3319; amd. Sec. 25, Ch. 550, L. 1983.

Cross-References

Criminal trespass and burglary, Title 45, ch. 6, part 2.

Impersonating a public servant, 45-7-209.

37-60-403. Licensee advertising. Every advertisement by a licensee soliciting or advertising business shall contain his name and address as they appear in the records of the board.

History: En. 66-3321 by Sec. 21, Ch. 234, L. 1974; R.C.M. 1947, 66-3321; amd. Sec. 26, Ch. 550, L. 1983.

37-60-404. Duty to maintain employee records. Each employer shall maintain a record containing such information relative to his employees as may be prescribed by the board.

History: En. 66-3320 by Sec. 20, Ch. 234, L. 1974; R.C.M. 1947, 66-3320; amd. Sec. 27, Ch. 550, L. 1983.

37-60-405. Approval of weapons. The weapons to be carried by armed licensees or identification card holders must be approved by the board.

History: En. 66-3328 by Sec. 28, Ch. 234, L. 1974; R.C.M. 1947, 66-3328; amd. Sec. 28, Ch. 550, L. 1983; amd. Sec. 14, Ch. 63, L. 1987.

Cross-References

Weapons, Title 45, ch. 8, part 3.

37-60-406. Peace officer's casual employment. A peace officer, as defined in 46-1-202, or a reserve officer, as defined in 7-32-201, is not prohibited or restricted from accepting and engaging in employment as a security guard during his off-duty hours, provided that he does not advertise his services or solicit employment and further provided that the chief of his department previously approves the off-duty employment. A peace officer or reserve officer engaged in casual employment is exempt from the provisions of this chapter only if the casual employment is authorized in writing by his sheriff or chief of police.

History: En. Sec. 29, Ch. 550, L. 1983; amd. Sec. 15, Ch. 63, L. 1987; amd. Sec. 255, Ch. 800, L. 1991.

37-60-407. Regulation of uniforms, badges, and equipment. (1) No licensee or officer, director, partner, manager, or employee of a licensee may wear, carry, or display a badge in connection with the activities of the licensee's business.

(2) The board is authorized to establish rules regulating uniforms and any emblems, patches, insignias, and devices that may be either worn or displayed on uniforms, vehicles, or equipment.

History: En. Sec. 30, Ch. 550, L. 1983; amd. Sec. 16, Ch. 63, L. 1987.

Cross-References

Impersonating a public servant, 45-7-209.

37-60-408. Restrictions on use of certain automatic dial-up systems. No person may install or use a security alarm system designed to automatically call a predetermined law enforcement telephone number without written permission from the chief law enforcement officer of the local government in which the alarm system is installed.

History: En. Sec. 1, Ch. 240, L. 1985.

37-60-409. Installation of new security alarm systems by electrician. An electrician who has received a license from the department pursuant to 37-68-301 may install new security alarm systems under the direction of a journeyman security alarm installer, but such work performed by an electrician is subject to inspection and approval by a security alarm installer licensed under 37-60-303.

History: En. Sec. 9, Ch. 647, L. 1985.

37-60-410 reserved.

37-60-411. Penalties — investigation — enforcement — review. (1) Any person who violates any of the provisions of this chapter or who conspires with another person to violate any of the provisions of this chapter relating to licensure is guilty of a misdemeanor punishable by a fine of not more than $1,000 or by imprisonment of not more than 1 year or by both such fine and imprisonment.

(2) The board shall:

(a) gather evidence of violations of this chapter, and of any rule established pursuant to this chapter, by persons engaged in a business subject to licensure under this chapter who fail to obtain licenses; and

(b) furnish that evidence to prosecuting officers of any county or city.

(3) The prosecuting officer of any county or city shall prosecute all violations of this chapter occurring within his jurisdiction.

(4) (a) If upon investigation the board considers it appropriate, it may issue a citation to a licensee. The citation may contain:

(i) an order of abatement fixing a reasonable time for abatement of the violation; and

(ii) assessment of an administrative fine in an amount not to exceed $500 for each violation of this chapter.

(b) A citation or fine assessment must inform the licensee that if he contests the finding of a violation, a review by the board may be requested in accordance with the Montana Administrative Procedure Act. If a review is not requested pursuant to this section, payment of the fine does not constitute an admission of the violation charged.

(c) If the licensee neither requests a review nor pays the assessed fine within 20 days of notice of the citation, the board shall suspend the license of such person 30 days after the notice of citation.

(d) All fines collected pursuant to this section must be deposited in the state special revenue fund for use of the board.

History: En. Sec. 31, Ch. 550, L. 1983; amd. Sec. 17, Ch. 63, L. 1987.

CHAPTER 61

ATTORNEYS AT LAW

Part 1 — Licensing Authorities

37-61-101. Supreme court may establish rules.
37-61-102. Attorneys' examining board — appointment, quorum, and powers.
37-61-103. Compensation and expenses of members of board.

Part 2 — Licensing

37-61-201. Who considered to be practicing law.
37-61-202. Who may be admitted as attorney.
37-61-203. Clerk, sheriff, or coroner may not practice law.
37-61-204. Qualifications, examination, and admission.
37-61-205. Application and examination fees.
37-61-206. Certificate of admission and license.
37-61-207. Oath.
37-61-208. Admission of attorneys from other states.
37-61-209. Roll of attorneys.
37-61-210. Penalty for practicing without license.
37-61-211. Annual license tax — municipal tax prohibited.
37-61-212. Collection of delinquent license tax.
37-61-213. Disposition of license tax.
37-61-214. Penalty for practicing without certificate indicating payment of tax.
37-61-215. Allowance of attorneys' fees to unlicensed persons forbidden.

Part 3 — Disbarment and Suspension

37-61-301. Disbarment.
37-61-302. Record of conviction.
37-61-303. Proceedings required on receipt of record of conviction.
37-61-304. Repealed.
37-61-305. Repealed.
37-61-306. Repealed.
37-61-307. Supreme court to make procedural rules — referees.
37-61-308. Witness fees and expenses.
37-61-309. Judgment.

Part 4 — Provisions Regulating Practice

37-61-401. Authority of attorney.
37-61-402. Production of proof of authority to court.
37-61-403. Change of attorney.
37-61-404. Notice of change.
37-61-405. Death or removal of attorney.
37-61-406. Penalty for deceit.
37-61-407. Penalty for delay.
37-61-408. Attorney prohibited from acquiring claim or demand for purpose of bringing action.
37-61-409. Penalty for violation.
37-61-410. Limitation.
37-61-411. Same rule when party prosecutes in person.
37-61-412. Partner of public prosecutor not to defend.
37-61-413. Former public prosecutors not to defend.
37-61-414. Partners not to appear on opposite sides.
37-61-415. Penalty for violation of two preceding sections.
37-61-416. Party may appear in person or by attorney.
37-61-417. Attorney may defend in person.
37-61-418. Attorney may see prisoner.
37-61-419. Attorney not to become surety on bond.
37-61-420. Judgment lien for compensation.

37-61-421. Attorney's or litigant's liability for excess costs.

Chapter Cross-References

Power of Supreme Court to make rules governing practice and admission to bar, Art. VII, sec. 2, Mont. Const.

Restrictions on practice of law by judges, Art. VII, sec. 9, Mont. Const.

Licensed attorney — exemption from regulation of escrow business, 32-7-103.

Professional service corporations, Title 35, ch. 4.

Part 1
Licensing Authorities

Part Cross-References

Limited duty of attorney to report violations of Montana Elder Abuse Prevention Act, 52-3-811.

37-61-101. Supreme court may establish rules. The supreme court may establish rules for the admission of attorneys and counselors not inconsistent with this chapter.

History: En. Sec. 396, C. Civ. Proc. 1895; re-en. Sec. 6387, Rev. C. 1907; re-en. Sec. 8942, R.C.M. 1921; re-en. Sec. 8942, R.C.M. 1935; R.C.M. 1947, 93-2007.

Cross-References

Attorneys and counselors-at-law, Rule VI, Rules of the Supreme Court of Montana (see annotation at Art. VII, sec. 2, Mont. Const.).

37-61-102. Attorneys' examining board — appointment, quorum, and powers. (1) The supreme court shall appoint members of the bar of this state, in good standing, as an examining board to conduct and assist in conducting the examination of applicants for admission to the bar. The board may not exceed seven members. The court may release, dismiss, or remove any member of the board and appoint other members at any time.

(2) A majority of the board is a quorum and may conduct examinations.

(3) The board shall perform the duties and render assistance in the examinations of applicants as prescribed by the court and is governed and controlled by the rules that the court may prescribe.

History: En. Sec. 5, Ch. 90, L. 1917; re-en. Sec. 8948, R.C.M. 1921; re-en. Sec. 8948, R.C.M. 1935; R.C.M. 1947, 93-2013; amd. Sec. 1, Ch. 221, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 221 in (1) increased board from 5 members to 7 members; in (3) deleted last sentence that read: "It shall be optional with the supreme court to appoint said board or to require the assistance of said board when appointed"; and made minor changes in style.

Cross-References

Attorneys and counselors-at-law, Rule VI, Rules of the Supreme Court of Montana (see annotation at Art. VII, sec. 2, Mont. Const.).

37-61-103. Compensation and expenses of members of board. The members of said board shall be entitled to their travel expenses in attending meetings of said board and in conducting such examination and also when away from their homes or places of residence, as provided for in 2-18-501 through 2-18-503, and shall be paid such compensation for services performed by them as members of said board as may be fixed and determined by the supreme court.

History: En. Sec. 6, Ch. 90, L. 1917; re-en. Sec. 8949 R.C.M. 1921; re-en. Sec. 8949, R.C.M. 1935; amd. Sec. 82, Ch. 147, L. 1963; amd. Sec. 63, Ch. 439, L. 1975; R.C.M. 1947, 93-2014.

Part 2

Licensing

Part Cross-References

Attorneys and counselors-at-law, Rule VI, Rules of the Supreme Court of Montana (see annotation at Art. VII, sec. 2, Mont. Const.).

Licensing to follow contested case procedure, 2-4-631.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-61-201. Who considered to be practicing law. Any person who shall hold himself out or advertise as an attorney or counselor at law or who shall appear in any court of record or before a judicial body, referee, commissioner, or other officer appointed to determine any question of law or fact by a court or who shall engage in the business and duties and perform such acts, matters, and things as are usually done or performed by an attorney at law in the practice of his profession for the purposes of parts 1 through 3 of this chapter shall be deemed practicing law.

History: En. Sec. 1, Ch. 90, L. 1917; re-en. Sec. 8944, R.C.M. 1921; re-en. Sec. 8944, R.C.M. 1935; R.C.M. 1947, 93-2009.

37-61-202. Who may be admitted as attorney. Any citizen or person who has bona fide declared the intention to become a citizen in the manner required by law, who is of good moral character, and who possesses the necessary qualifications of learning and ability is entitled to admission as attorney and counselor in all the courts of this state.

History: En. Sec. 390, C. Civ. Proc. 1895; re-en. Sec. 6381, Rev. C. 1907; re-en. Sec. 8936, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 275; re-en. Sec. 8936, R.C.M. 1935; amd. Sec. 11, Ch. 168, L. 1971; R.C.M. 1947, 93-2001(part); amd. Sec. 60, Ch. 10, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 10 near beginning, after "person", deleted "resident of this state"; and made minor changes in style.

Cross-References

Rules for determining residence, 1-1-215.

37-61-203. Clerk, sheriff, or coroner may not practice law. The clerk, deputy clerk, sheriff, undersheriff, deputy sheriff, or coroner must not, during his continuance in office, practice as attorney and counselor in any court.

History: En. Sec. 429, C. Civ. Proc. 1895; re-en. Sec. 6421, Rev. C. 1907; re-en. Sec. 8992, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 171; re-en. Sec. 8992, R.C.M. 1935; R.C.M. 1947, 93-2119.

Cross-References

Practice of law by Workers' Compensation Judge unlawful, 2-15-1707.

Certain officers not to practice law, 3-1-601.

Restrictions on practice of law by certain officers, 7-4-2210.

37-61-204. Qualifications, examination, and admission. Each applicant for admission as an attorney and counselor must produce satisfactory testimonials of good moral character and a certificate of one or more reputable counselors at law that he has been engaged in the study of law for 2 successive years prior to the making of such application and undergo a strict examination as to his qualifications by any one or more of the justices of the supreme court.

The form and manner of the examination shall be as the justices may from time to time determine. However, a diploma from the university of Montana law school at Missoula or other evidence of having completed the 3-year course in law of that school entitles the holder to a license to practice law in all the courts of this state, subject to the right of the chief justice of the supreme court to order an examination as in ordinary cases of applicants without such diploma or evidence.

History: En. Sec. 391, C. Civ. Proc. 1895; re-en. Sec. 6382, Rev. C. 1907; amd. Sec. 1, Ch. 18, L. 1915; re-en. Sec. 8937, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 276; re-en. Sec. 8937, R.C.M. 1935; amd. Sec. 35, Ch. 101, L. 1977; R.C.M. 1947, 93-2002.

Cross-References

Attorneys and counselors-at-law, Rule VI, Rules of the Supreme Court of Montana (see annotation at Art. VII, sec. 2, Mont. Const.).

37-61-205. Application and examination fees. (1) Every applicant for admission to the bar shall pay to the state bar of Montana, at the time the applicant files an application for admission to the bar, an application fee commensurate with the cost of processing the application as determined by the supreme court.

(2) In addition to the fee provided for in subsection (1), the supreme court may charge an examination fee commensurate with the cost of administering the bar examination. The examination fee must be paid to the clerk of the supreme court when the applicant files the application for admission to the bar.

(3) All money collected and spent from fees provided for in subsection (1) must be accounted for annually in a report by the state bar of Montana to the supreme court. The report must provide details of fees collected and categories of expenditures for processing applications and must be in a form satisfactory to the supreme court. All money collected from fees provided for in subsection (2) must be deposited with the state treasurer by the clerk of the supreme court and placed in the general fund.

History: En. Sec. 7, Ch. 90, L. 1917; re-en. Sec. 8950, R.C.M. 1921; re-en. Sec. 8950, R.C.M. 1935; amd. Sec. 83, Ch. 147, L. 1963; R.C.M. 1947, 93-2015; amd. Sec. 1, Ch. 220, L. 1983; amd. Sec. 1, Ch. 493, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 493 near beginning of (1), after "pay to the", substituted "state bar of Montana" for "clerk of the supreme court" and near middle, after "admission", inserted "to the bar, an application"; in (2) inserted second sentence requiring examination fee to be paid to Clerk of Supreme Court when applicant files for admission to State Bar; in (3) inserted first two sentences providing that all money collected and spent from fees provided for in subsection (1) must be annually accounted for in a report by State Bar to Supreme Court with details of fees collected and categories of expenditures for processing applications in a form satisfactory to the court; and made minor changes in style.

Cross-References

Disposition of fees, 3-2-404.

Contribution of fees to judges' retirement fund, 19-5-404.

37-61-206. Certificate of admission and license. If upon examination he is found qualified, the supreme court must admit him as an attorney and counselor in all the courts of this state and must direct an order to be entered to that effect upon its records, and that a certificate of such record be given to him by the clerk of the court, which certificate is his license.

History: En. Sec. 392, C. Civ. Proc. 1895; re-en. Sec. 6383, Rev. C. 1907; re-en. Sec. 8938, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 277; re-en. Sec. 8938, R.C.M. 1935; R.C.M. 1947, 93-2003.

Cross-References

Clerk to charge fee for certificate of admission, 3-2-403.

37-61-207. Oath. Every person on his admission must take an oath to support the Constitution of the United States and The Constitution of the State of Montana and to faithfully discharge the duties of an attorney and counselor at law with fidelity to the best of his knowledge and ability. A certificate of such oath must be endorsed upon the license and a duplicate filed with the clerk.

History: En. Sec. 393, C. Civ. Proc. 1895; re-en. Sec. 6384, Rev. C. 1907; re-en. Sec. 8939, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 278; re-en. Sec. 8939, R.C.M. 1935; R.C.M. 1947, 93-2004.

Cross-References

Oath defined, 1-1-201.

Oaths, Title 1, ch. 6.

37-61-208. Admission of attorneys from other states. Every citizen of the United States or person resident of this state who has bona fide declared his or her intention to become a citizen in the manner required by law who has been admitted to practice law in the highest courts of another state or of a foreign country where the common law of England constitutes the basis of jurisprudence may be admitted to practice in the courts of this state upon the production of his or her license and satisfactory evidence of good moral character, but the court may examine the applicant as to his or her qualifications. However, any person who is a nonresident of the state of Montana and who has been admitted and is at the time authorized to practice law in the highest courts of another state or of a foreign country may, upon motion of any attorney admitted to practice in the courts of this state, be permitted by the court to appear as attorney in any action or proceeding in such court and shall, when so permitted, be entitled to the same rights and privileges and be subject to the same duties and obligations with respect to such actions or proceedings as an attorney duly admitted to practice in the courts of this state.

History: En. Sec. 394, C. Civ. Proc. 1895; re-en. Sec. 6385, Rev. C. 1907; amd. Sec. 1, Ch. 13, L. 1911; re-en. Sec. 8940, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 279; re-en. Sec. 8940, R.C.M. 1935; R.C.M. 1947, 93-2005.

Cross-References

Applicability of common law, 1-1-108.

Common law of England — when rule of decision, 1-1-109.

Rules for determining residence, 1-1-215.

Citizenship, Title 1, ch. 1, part 4.

Civil action — form and commencement, Title 25, ch. 1, part 1.

37-61-209. Roll of attorneys. The clerk of the supreme court must keep a roll of the attorneys and counselors admitted to practice, which must be signed by the person admitted before he receives his license.

History: En. Sec. 395, C. Civ. Proc. 1895; re-en. Sec. 6386, Rev. C. 1907; re-en. Sec. 8941, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 280; re-en. Sec. 8941, R.C.M. 1935; R.C.M. 1947, 93-2006.

Cross-References

Duty of Clerk of Supreme Court to keep a roll of attorneys, 3-2-402.

37-61-210. Penalty for practicing without license. If any person practices law in any court, except a justice's court or a city court, without having received a license as attorney and counselor, he is guilty of a contempt of court.

History: En. Sec. 397, C. Civ. Proc. 1895; re-en. Sec. 6388, Rev. C. 1907; re-en. Sec. 8943, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 281; re-en. Sec. 8943, R.C.M. 1935; R.C.M. 1947, 93-2008.

Cross-References

Contempts, Title 3, ch. 1, part 5.

Justices' Courts, Title 3, ch. 10.

City Courts, Title 3, ch. 11.

Procedure in Justices' Courts, Title 25, ch. 31.

Payment of attorneys' fees to unlicensed persons forbidden, 37-61-215.

37-61-211. Annual license tax — municipal tax prohibited. (1) Every attorney or counselor at law admitted by the supreme court of the state to practice his profession within the state is required to pay a license tax of $25 a year. The tax is payable to and collected by the clerk of the supreme court on or before April 1 of each year.

(2) Upon the payment of the tax, the clerk shall issue and deliver a certificate to the person paying the tax, certifying to the payment of the license tax and stating the period covered by the payment.

(3) A license tax may not be imposed upon attorneys by a municipality or any other subdivision of the state.

History: En. Sec. 2, Ch. 90, L. 1917; re-en. Sec. 8945, R.C.M. 1921; re-en. Sec. 8945, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1961; R.C.M. 1947, 93-2010; amd. Sec. 1, Ch. 379, L. 1989.

Cross-References

Disposition of fees, 3-2-404.

Contribution of fees to Judges' Retirement Fund, 19-5-404.

37-61-212. Collection of delinquent license tax. If any practicing attorney or counselor at law shall fail, neglect, or refuse to pay to the clerk of the supreme court the license tax imposed by this chapter for a period of 30 days after the same is due and payable, it shall be the duty of the clerk of the supreme court to take such action for the collection of the same as is required of the county treasurer in cases of nonpayment of other licenses, as provided by 7-21-2116, and the provisions of 7-21-2115 through 7-21-2117 shall control in said proceedings so far as the same are applicable thereto.

History: En. Sec. 16, Ch. 90, L. 1917; re-en. Sec. 8959, R.C.M. 1921; re-en. Sec. 8959, R.C.M. 1935; R.C.M. 1947, 93-2024.

37-61-213. Disposition of license tax. All moneys so collected during any month shall, on or before the first day of the succeeding month, be delivered to and deposited with the state treasurer by the clerk of the supreme court, and the state treasurer shall deposit such moneys in the general fund.

History: En. Sec. 3, Ch. 90, L. 1917; re-en. Sec. 8946, R.C.M. 1921; re-en. Sec. 8946, R.C.M. 1935; amd. Sec. 81, Ch. 147, L. 1963; R.C.M. 1947, 93-2011.

Cross-References

Disposition of fees, 3-2-404.

Contributions of fees to Judges' Retirement Fund, 19-5-404.

37-61-214. Penalty for practicing without certificate indicating payment of tax. No attorney shall practice or be permitted to practice his profession in any of the courts of record in this state until he shall have paid such license tax for the current fiscal year and procured a certificate, as hereinabove provided, and any attorney violating this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $25.

History: **En. Sec. 4, Ch. 90, L. 1917; re-en. Sec. 8947, R.C.M. 1921; re-en. Sec. 8947, R.C.M. 1935; R.C.M. 1947, 93-2012.**

37-61-215. Allowance of attorneys' fees to unlicensed persons forbidden. It shall be unlawful for any court within this state to allow attorneys' fees in any action or proceeding before said court in which attorneys' fees are allowed by law to either party to such action or proceeding when such party is represented by anyone other than a duly admitted or licensed attorney at law.

History: **En. Sec. 15, Ch. 90, L. 1917; re-en. Sec. 8958, R.C.M. 1921; re-en. Sec. 8958, R.C.M. 1935; R.C.M. 1947, 93-2023.**

Part 3
Disbarment and Suspension

Part Cross-References

Orders of the Supreme Court relating to the Commission on Practice, see annotation at Art. VII, sec. 2, Mont. Const.

Rules of the Commission on Practice, see annotation at Art. VII, sec. 2, Mont. Const.

Guidelines for local grievance committee procedure, see annotation at Art. VII, sec. 2, Mont. Const.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

37-61-301. Disbarment. (1) The supreme court of the state shall have exclusive jurisdiction to remove or suspend attorneys and counselors at law.

(2) An attorney and counselor may be removed or suspended for any of the following causes arising after his admission to practice:

(a) his conviction of a felony or misdemeanor involving moral turpitude, in which case the record of conviction is conclusive evidence;

(b) willful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession which he ought in good faith to do or forbear and any violation of the oath taken by him or of his duties as such attorney and counselor;

(c) corruptly or willfully and without authority appearing as attorney for a party to an action or proceeding;

(d) lending his name to be used as attorney and counselor by another person who is not an attorney and counselor;

(e) being guilty of deceit, malpractice, crime, or misdemeanor involving moral turpitude.

History: **En. Sec. 402, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 36, L. 1903; re-en. Sec. 6393, Rev. C. 1907; re-en. Sec. 8961, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 287; re-en. Sec. 8961, R.C.M. 1935; R.C.M. 1947, 93-2026(part).**

37-61-302. Record of conviction. In case of the conviction of an attorney and counselor of a felony or misdemeanor involving moral turpitude, the clerk of the court in which such conviction is had shall, within 30 days thereafter, transmit to the supreme court a certified copy of the record of conviction.

History: En. Sec. 417, C. Civ. Proc. 1895; re-en. Sec. 6409, Rev. C. 1907; re-en. Sec. 8962, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 288; re-en. Sec. 8962, R.C.M. 1935; R.C.M. 1947, 93-2027.

37-61-303. Proceedings required on receipt of record of conviction. The proceedings to remove or suspend an attorney and counselor under 37-61-301(2)(a) must be taken by the court on the receipt of a certified copy of the record of conviction. The proceedings under the subsections (2)(b), (2)(c), or (2)(d) of 37-61-301 may be taken by the court for the matters within its knowledge or may be taken upon the information of another.

History: En. Sec. 418, C. Civ. Proc. 1895; re-en. Sec. 6410, Rev. C. 1907; re-en. Sec. 8963, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 289; re-en. Sec. 8963, R.C.M. 1935; R.C.M. 1947, 93-2028.

37-61-304. Repealed. Sec. 1, Ch. 388, L. 1983.

History: En. Sec. 8, Ch. 90, L. 1917; re-en. Sec. 8951, R.C.M. 1921; re-en. Sec. 8951, R.C.M. 1935; R.C.M. 1947, 93-2016.

37-61-305. Repealed. Sec. 1, Ch. 388, L. 1983.

History: En. Sec. 9, Ch. 90, L. 1917; re-en. Sec. 8952, R.C.M. 1921; re-en. Sec. 8952, R.C.M. 1935; R.C.M. 1947, 93-2017.

37-61-306. Repealed. Sec. 1, Ch. 388, L. 1983.

History: En. Sec. 10, Ch. 90, L. 1917; re-en. Sec. 8953, R.C.M. 1921; re-en. Sec. 8953, R.C.M. 1935; R.C.M. 1947, 93-2018.

37-61-307. Supreme court to make procedural rules — referees. (1) The supreme court may make rules regulating pleadings, practice, and procedure in such action or proceeding; and in the absence of such rules, the law relating to pleadings, practice, and procedure in civil actions, so far as applicable, shall control.

(2) The court may order a reference as authorized by Rule 53, M.R.Civ.P.; and in the event of a reference, the referee or referees shall have the powers provided in such rule and shall receive such compensation as shall be fixed and allowed by the supreme court.

History: En. Sec. 11, Ch. 90, L. 1917; re-en. Sec. 8954, R.C.M. 1921; re-en. Sec. 8954, R.C.M. 1935; R.C.M. 1947, 93-2019.

Cross-References

Orders of the Supreme Court relating to the Commission on Practice, see annotation at Art. VII, sec. 2, Mont. Const.

Rules of the Commission on Practice, see annotation at Art. VII, sec. 2, Mont. Const.

Guidelines for local grievance committee procedure, see annotation at Art. VII, sec. 2, Mont. Const.

Pleadings, motions, and other papers, Title 25, ch. 4.

Trials, Title 25, ch. 7.

Montana Rules of Civil Procedure, Title 25, ch. 20.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

37-61-308. Witness fees and expenses. Witnesses on behalf of the complainant in any such action or proceeding shall be entitled to the fees and mileage provided by law for witnesses in civil actions in the district court.

History: En. Sec. 12, Ch. 90, L. 1917; re-en. Sec. 8955, R.C.M. 1921; re-en. Sec. 8955, R.C.M. 1935; amd. Sec. 84, Ch. 147, L. 1963; R.C.M. 1947, 93-2020.

Cross-References

Mileage allowance, 2-18-503.

Witness fees, Title 26, ch. 2, part 5.

37-61-309. Judgment. Upon conviction, in cases arising under 37-61-301(2)(a), the judgment of the court must be that the name of the party be stricken from the roll of attorneys and counselors of the court and that he be precluded from practicing as such attorney or counselor in all the courts of this state. Upon conviction in cases under the other subsections of that section, the judgment of the court may be, according to the gravity of the offense charged, deprivation of the right to practice as attorney or counselor in the courts of this state permanently or for a limited period.

History: En. Sec. 428, C. Civ. Proc. 1895; re-en. Sec. 6420, Rev. C. 1907; re-en. Sec. 8973, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 299; re-en. Sec. 8973, R.C.M. 1935; R.C.M. 1947, 93-2038.

Cross-References

Duty of Clerk of Supreme Court to keep roll of attorneys, 3-2-402, 37-61-209.

Part 4

Provisions Regulating Practice

37-61-401. Authority of attorney. (1) An attorney and counselor has authority to:

(a) bind his client in any steps of an action or proceeding by his agreement filed with the clerk or entered upon the minutes of the court and not otherwise;

(b) receive money claimed by his client in an action or proceeding during the pendency thereof or after judgment unless a revocation of his authority is filed and, upon the payment thereof and not otherwise, to discharge the claim or acknowledge satisfaction of the judgment.

(2) The death of a party to an action or proceeding does not revoke the authority of his attorney of record in said action or proceeding, but the authority of the attorney is continued in all respects the same and with like effect as it was prior to the death of such party until such attorney shall withdraw his appearance in said action or proceeding or some other attorney shall be substituted for him or his authority shall be otherwise terminated and entry thereof made to appear in the record of such action or proceeding.

History: En. Sec. 398, C. Civ. Proc. 1895; re-en. Sec. 6389, Rev. C. 1907; amd. Sec. 1, Ch. 35, L. 1915; re-en. Sec. 8974, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 283; re-en. Sec. 8974, R.C.M. 1935; R.C.M. 1947, 93-2101.

37-61-402. Production of proof of authority to court. The court or judge, on motion of either party, may require the attorney of the adverse party to produce and prove the authority under which he appears and may stay all proceedings until such is shown and may at any time summarily relieve a party from the consequences of the acts of an unauthorized attorney.

History: En. Sec. 431, C. Civ. Proc. 1895; re-en. Sec. 6423, Rev. C. 1907; re-en. Sec. 8994, R.C.M. 1921; re-en. Sec. 8994, R.C.M. 1935; R.C.M. 1947, 93-2121.

37-61-403. Change of attorney. The attorney in an action or special proceeding may be changed at any time before or after judgment or final determination, as follows:

(1) upon consent of both client and attorney, filed with the clerk or entered upon the minutes;

(2) upon the order of the court, upon the application of either client or attorney, after notice from one to the other.

History: En. Sec. 399, C. Civ. Proc. 1895; re-en. Sec. 6390, Rev. C. 1907; re-en. Sec. 8975, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 284; re-en. Sec. 8975, R.C.M. 1935; R.C.M. 1947, 93-2102.

37-61-404. Notice of change. When an attorney is changed as provided in 37-61-403, written notice of the change and the substitution of a new attorney or of the appearance of the party in person must be given to the adverse party. Until then he must recognize the former attorney.

History: En. Sec. 400, C. Civ. Proc. 1895; re-en. Sec. 6391, Rev. C. 1907; re-en. Sec. 8976, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 285; re-en. Sec. 8976, R.C.M. 1935; R.C.M. 1947, 93-2103.

37-61-405. Death or removal of attorney. When an attorney dies or is removed or suspended or ceases to act as such, a party to an action for whom he was acting as attorney must, before any further proceedings are had against him, be required by the adverse party, by written notice, to appoint another attorney or appear in person.

History: En. Sec. 401, C. Civ. Proc. 1895; re-en. Sec. 6392, Rev. C. 1907; re-en. Sec. 8977, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 286; re-en. Sec. 8977, R.C.M. 1935; R.C.M. 1947, 93-2104.

Cross-References

Service of notice of appeal upon death of attorney, Rule 4, M.R.App.P. (see Title 25, ch. 21).

37-61-406. Penalty for deceit. An attorney or counselor who is guilty of any deceit or collusion or consents to any deceit or collusion with intent to deceive the court or a party forfeits to the party injured by his deceit or collusion treble damages. He is also guilty of a misdemeanor.

History: En. Sec. 403, C. Civ. Proc. 1895; re-en. Sec. 6395, Rev. C. 1907; re-en. Sec. 8978, R.C.M. 1921; Cal. Pen. C. Sec. 160; re-en. Sec. 8978, R.C.M. 1935; R.C.M. 1947, 93-2105.

Cross-References

Misdemeanor penalty when none specified, 46-18-212.

37-61-407. Penalty for delay. An attorney and counselor who willfully delays his client's cause with a view to his own gain or willfully receives money or an allowance for or on account of money which he has not laid out or become answerable for forfeits to the party injured treble damages.

History: En. Sec. 404, C. Civ. Proc. 1895; re-en. Sec. 6396, Rev. C. 1907; re-en. Sec. 8979, R.C.M. 1921; Cal. Pen. C. Sec. 160; re-en. Sec. 8979, R.C.M. 1935; R.C.M. 1947, 93-2106.

Cross-References

"Willfully" defined, 1-1-204.

Damages for appeal without merit, Rule 32, M.R.App.P. (see Title 25, ch. 21).

37-61-408. Attorney prohibited from acquiring claim or demand for purpose of bringing action. (1) An attorney and counselor must not directly or indirectly buy or be in any manner interested in buying a bond, promissory note, bill of exchange, book debt, or other thing in action with the intent and for the purpose of bringing an action thereon.

(2) An attorney and counselor must not, by himself or by or in the name of another person, either before or after action brought, promise or give or procure to be promised or given a valuable consideration to any person as an inducement to placing or in consideration of having placed in his hands or in the hands of another person a demand of any kind for the purpose of bringing an action thereon. This subsection does not apply to an agreement between

attorneys and counselors, or either, to divide between themselves the compensation to be received.

History: (1)En. Sec. 405, C. Civ. Proc. 1895; re-en. Sec. 6397, Rev. C. 1907; re-en. Sec. 8980, R.C.M. 1921; Cal. Pen. C. Sec. 161; re-en. Sec. 8980, R.C.M. 1935; Sec. 93-2107, R.C.M. 1947; (2)En. Sec. 406, C. Civ. Proc. 1895; re-en. Sec. 6398, Rev. C. 1907; re-en. Sec. 8981, R.C.M. 1921; re-en. Sec. 8981, R.C.M. 1935; Sec. 93-2108, R.C.M. 1947; R.C.M. 1947, 93-2107, 93-2108(part).

37-61-409. Penalty for violation. An attorney and counselor who violates 37-61-408 is guilty of a misdemeanor and on conviction thereof shall be punished accordingly and must be removed from office by the supreme court.

History: En. Sec. 406, C. Civ. Proc. 1895; re-en. Sec. 6398, Rev. C. 1907; re-en. Sec. 8981, R.C.M. 1921; re-en. Sec. 8981, R.C.M. 1935; R.C.M. 1947, 93-2108(part); amd. Sec. 23, Ch. 22, L. 1979.

Cross-References

Misdemeanor penalty when none specified, 46-18-212.

37-61-410. Limitation. Sections 37-61-407 through 37-61-409 do not prohibit the receipt by an attorney or counselor of a bond, promissory note, bill of exchange, book debt, or other thing in action in payment for property sold or for services actually rendered or for a debt antecedently contracted or from buying or receiving a bill of exchange, draft, or other thing in action for the purpose of remittance and without intent to violate any of those sections.

History: En. Sec. 407, C. Civ. Proc. 1895; re-en. Sec. 6399, Rev. C. 1907; re-en. Sec. 8982, R.C.M. 1921; re-en. Sec. 8982, R.C.M. 1935; R.C.M. 1947, 93-2109.

37-61-411. Same rule when party prosecutes in person. Sections 37-61-407 through 37-61-410 apply to a person prosecuting an action in person who does an act which an attorney and counselor is therein forbidden to do.

History: En. Sec. 408, C. Civ. Proc. 1895; re-en. Sec. 6400, Rev. C. 1907; re-en. Sec. 8983, R.C.M. 1921; re-en. Sec. 8983, R.C.M. 1935; R.C.M. 1947, 93-2110.

37-61-412. Partner of public prosecutor not to defend. An attorney and counselor must not directly or indirectly advise concerning, aid, or take any part in the defense of an action or special proceeding, civil or criminal, brought, carried on, aided, advocated, or prosecuted, as attorney general, county attorney, or other public prosecutor, by a person with whom he is interested or connected, either directly or indirectly, as a law partner; or take or receive, directly or indirectly, from a defendant therein or other person a fee, gratuity, or reward for or upon any cause, consideration, pretense, understanding, or agreement whatever, express or implied, having relation thereto or to the prosecution or defense thereof.

History: En. Sec. 409, C. Civ. Proc. 1895; re-en. Sec. 6401, Rev. C. 1907; re-en. Sec. 8984, R.C.M. 1921; Cal. Pen. C. Sec. 162; re-en. Sec. 8984, R.C.M. 1935; R.C.M. 1947, 93-2111.

Cross-References

Standards of conduct, Title 2, ch. 2.

Limitations on activities of County Attorneys and Deputy County Attorneys, 7-4-2704.

37-61-413. Former public prosecutors not to defend. An attorney and counselor who has brought, carried on, aided, advocated, or prosecuted or has been in anywise connected with an action or special proceeding, civil or criminal, as attorney general, county attorney, or other public prosecutor, must not, at any time thereafter, directly or indirectly advise concerning, aid, or take any part in the defense thereof; or take or receive, either directly or indirectly, from a defendant therein or other person a fee, gratuity, or reward for or upon any cause, consideration, pretense, understanding, or agreement, either express or implied, having relation thereto or to the prosecution or defense thereof.

History: En. Sec. 410, C. Civ. Proc. 1895; re-en. Sec. 6402, Rev. C. 1907; re-en. Sec. 8985, R.C.M. 1921; Cal. Pen. C. Sec. 162; re-en. Sec. 8985, R.C.M. 1935; R.C.M. 1947, 93-2112.

Cross-References

Standards of conduct, Title 2, ch. 2.

Limitations on activities of County Attorneys and Deputy County Attorneys, 7-4-2704.

37-61-414. Partners not to appear on opposite sides. Whenever a law partnership or any member thereof accepts employment to prosecute or defend any action, civil or criminal, or to advise in relation thereto, no member of said partnership is permitted, then or afterward, to act as attorney or counselor on the side opposite to that upon which such original employment was had. This section does not prevent a person who has been employed as attorney and counselor in an action or proceeding before becoming a member of a partnership from appearing and acting therein until its completion.

History: En. Sec. 411, C. Civ. Proc. 1896; Re-en. Sec. 6403, Rev. C. 1907; re-en. Sec. 8986, R.C.M. 1921; re-en. Sec. 8986, R.C.M. 1935; R.C.M. 1947, 93-2113.

37-61-415. Penalty for violation of two preceding sections. An attorney and counselor who violates either 37-61-413 or 37-61-414 is guilty of a misdemeanor and on conviction thereof shall be punished accordingly and must be removed from office by the supreme court.

History: En. Sec. 412, C. Civ. Proc. 1895; re-en. Sec. 6404, Rev. C. 1907; re-en. Sec. 8987, R.C.M. 1921; re-en. Sec. 8987, R.C.M. 1935; R.C.M. 1947, 93-2114.

Cross-References

Misdemeanor penalty when none specified, 46-18-212.

37-61-416. Party may appear in person or by attorney. A party to a civil action who is of full age may prosecute or defend the same in person or by attorney at his election unless he has been judicially declared to be incompetent to manage his affairs. Each provision of this part relating to the conduct of an action wherein the attorney for the party is mentioned includes a party prosecuting or defending in person unless otherwise specially prescribed therein or unless that construction is manifestly repugnant to the context. If a party has an attorney in the action, he cannot appear or act in person where an attorney may appear or act either by special provisions of law or by the course and practice of the court.

History: En. Sec. 413, C. Civ. Proc. 1895; re-en. Sec. 6405, Rev. C. 1907; re-en. Sec. 8988, R.C.M. 1921; re-en. Sec. 8988, R.C.M. 1935; R.C.M. 1947, 93-2115.

37-61-417. Attorney may defend in person. This part does not prohibit an attorney or counselor from defending himself in person if prosecuted either civilly or criminally.

History: En. Sec. 414, C. Civ. Proc. 1895; re-en. Sec. 6406, Rev. C. 1907; re-en. Sec. 8989, R.C.M. 1921; Cal. Pen. C. Sec. 163; re-en. Sec. 8989, R.C.M. 1935; R.C.M. 1947, 93-2116.

37-61-418. Attorney may see prisoner. All public officers, sheriffs, coroners, jailers, constables, or other officers or persons having in custody any person committed, imprisoned, or restrained of his liberty for any alleged cause whatever must admit any practicing attorney and counselor at law in this state whom such person restrained of his liberty may desire to see or consult, to see and consult such person so imprisoned, alone and in private, at the jail or other place of custody. Any officer violating this provision shall forfeit and pay $100 to the person aggrieved, to be recovered by action of debt in any court of competent jurisdiction.

History: En. Sec. 13, p. 373, Bannack Stat.; re-en. Sec. 13, p. 378, Cod. Stat. 1871; re-en. Sec. 52, 5th Div. Rev. Stat. 1879; re-en. Sec. 114, 5th Div. Comp. Stat. 1887; re-en. Sec. 415, C. Civ. Proc. 1895; re-en. Sec. 6407, Rev. C. 1907; re-en. Sec. 8990, R.C.M. 1921; re-en. Sec. 8990, R.C.M. 1935; R.C.M. 1947, 93-2117.

37-61-419. Attorney not to become surety on bond. (1) Without the consent of the district court judge who had first approved the security, no attorney and counselor at law shall become security in any bond or recognizance of any sheriff, constable, or coroner or upon any bond, undertaking, or recognizance authorized by any statute, to be taken for the payment of any sum of money into court in default of the principal.

(2) No attorney at law may act as surety for bail or furnish bail.

History: En. Sec. 14, p. 373, Bannack Stat.; re-en. Sec. 14, p. 378, Cod. Stat. 1871; re-en. Sec. 53, 5th Div. Rev. Stat. 1879; re-en. Sec. 115, 5th Div. Comp. Stat. 1887; re-en. Sec. 416, C. Civ. Proc. 1895; re-en. Sec. 6408, Rev. C. 1907; re-en. Sec. 8991, R.C.M. 1921; re-en. Sec. 8991, R.C.M. 1935; R.C.M. 1947, 93-2118; amd. Sec. 164, Ch. 575, L. 1981.

Cross-References

Bail, Title 46, ch. 9.

37-61-420. Judgment lien for compensation. (1) The compensation of an attorney and counselor for his services is governed by agreement, express or implied, which is not restrained by law.

(2) From the commencement of an action or the service of an answer containing a counterclaim, the attorney who appears for a party has a lien upon his client's cause of action or counterclaim which attaches to a verdict, report, decision, or judgment in his client's favor and the proceeds thereof in whose hands they may come. Such lien cannot be affected by any settlement between the parties before or after judgment.

History: En. Sec. 430, C. Civ. Proc. 1895; re-en. Sec. 6422, Rev. C. 1907; re-en. Sec. 8993, R.C.M. 1921; re-en. Sec. 8993, R.C.M. 1935; R.C.M. 1947, 93-2120.

Cross-References

Judgment, Title 25, ch. 9.

Attorneys' fees, Title 25, ch. 10, part 3.

Execution of judgment, Title 25, ch. 13.

Liens of physicians, nurses, and hospitals, 71-3-1114.

37-61-421. Attorney's or litigant's liability for excess costs. An attorney or party to any court proceeding who, in the determination of the court, multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorney fees reasonably incurred because of such conduct.

History: En. Sec. 1, Ch. 533, L. 1985.

CHAPTER 62

POLYGRAPH EXAMINERS

Part 1 — General

37-62-101. Definitions.
37-62-102. Powers and duties of department.

Part 2 — Licensing

37-62-201. License required.
37-62-202. Issuance of examiner's license with examination.
37-62-203. Issuance of examiner's license — reciprocity.
37-62-204. Terms of license — renewal.
37-62-205. Form of license — display of license.
37-62-206. Pocket card.
37-62-207. Continuing education.
37-62-208. Fees.
37-62-209. Internship license.
37-62-210 and 37-62-211 reserved.
37-62-212. Suspension and revocation.
37-62-213. Hearing.

Part 3 — Miscellaneous Provisions

37-62-301. Minimum standards for instruments or devices.
37-62-302. Inadmissibility of results as evidence.
37-62-303. Pre-test procedure — termination of examination.
37-62-304 through 37-62-310 reserved.
37-62-311. Penalty.

Chapter Cross-References

Lie detector tests prohibited, 39-2-304.

Part 1

General

37-62-101. Definitions. In this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(2) "Examinee" means an individual who is being examined, tested, or questioned by an examiner for the purpose of detecting deception or verifying truthfulness.

(3) "Examiner" means any person who:

(a) purports to be able to detect deception, verify truthfulness, or provide a diagnostic opinion of deception or truthfulness through the use of a mechanical device or instrument;

(b) represents that he can or does offer the service of detecting deception, verifying truthfulness, or providing a diagnostic opinion of deception or truthfulness through the use of a mechanical device or instrument; or

(c) uses a mechanical device or instrument to measure or record an individual's bodily responses or psychophysiological activities to enable or assist the detection of deception, the verification of truthfulness, or the reporting of a diagnostic opinion regarding deception or truthfulness.

(4) "Internship" means the study of polygraphs and the administration of polygraph examinations by a trainee under the personal supervision and control of a licensed polygraph examiner.

History: En. Sec. 1, Ch. 185, L. 1983; amd. Sec. 1, Ch. 547, L. 1985.

37-62-102. Powers and duties of department. The department shall:

(1) administer and enforce the provisions of this chapter;

(2) adopt rules in accordance with the Montana Administrative Procedure Act to carry out the provisions of this chapter; and

(3) investigate all complaints concerning violations of this chapter unless the department determines that any such complaint is frivolous or otherwise lacking in merit.

History: En. Sec. 3, Ch. 185, L. 1983.

Part 2
Licensing

37-62-201. License required. No person may, unless licensed under the provisions of this chapter:

(1) hold himself out to be an examiner;

(2) use or attempt to use any mechanical device or instrument for the purpose of detecting deception, verifying truthfulness, or reporting a diagnostic opinion regarding deception or truthfulness;

(3) purport to detect deception or verify truthfulness through mechanical devices or instruments; or

(4) advertise or represent that he can or does offer the service of detecting deception, verifying truthfulness, or reporting a diagnostic opinion regarding an individual's deception or truthfulness through mechanical devices or instruments.

History: En. Sec. 4, Ch. 185, L. 1983.

37-62-202. Issuance of examiner's license with examination. Upon application and payment of the required fee, an applicant must be granted a license as an examiner if he:

(1) is at least 18 years old;

(2) is a citizen of the United States;

(3) is of good moral character;

(4) has successfully completed a course in polygraph instruction at an American polygraph association accredited institution;

(5) has a high school diploma from an accredited high school or its equivalent; and

(6) has successfully passed an examination conducted by the department that tests the applicant's general knowledge of the use of the polygraph or a comparable examination conducted by another state whose law requires successful completion of the examination as qualification for a license.

History: En. Sec. 6, Ch. 185, L. 1983.

Cross-References

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-62-203. Issuance of examiner's license — reciprocity. (1) Upon application to the department and payment of the required license fee, a person must be issued an examiner's license if he has satisfied the department by affidavit or otherwise that he meets the minimum requirements for licensing provided in 37-62-202.

(2) Except as provided in subsection (3), an applicant licensed as a polygraph examiner in another state must, upon application to the department and payment of the required license fee, be issued an examiner's license without examination if he satisfies the department by affidavit or otherwise that he:

(a) has legally administered polygraph examinations in the state in which he is licensed for at least 1 year before making application under this subsection; and

(b) meets the requirements for licensing set forth in 37-62-202.

(3) No license may be issued without examination under subsection (2) unless the state in which the applicant is licensed has and maintains licensing requirements substantially equivalent to those provided in this chapter and grants reciprocity to examiners licensed in Montana under terms similar to those provided in this section.

History: En. Sec. 5, Ch. 185, L. 1983.

37-62-204. Terms of license — renewal. (1) An examiner's license expires at midnight on March 1 of each year and is renewable only after payment of a renewal fee and proof of compliance with continuing education requirements as provided by 37-62-207.

(2) An examiner whose license has expired may at any time within 2 years after the expiration date obtain a renewal license without examination upon payment of a renewal fee to the department. An examiner whose license expired while he was on active duty in the armed forces of the United States or the national guard may, notwithstanding the provisions of 10-1-605, renew his license without examination within 2 years after discharge from service.

History: En. Sec. 9, Ch. 185, L. 1983; amd. Sec. 2, Ch. 547, L. 1985.

37-62-205. Form of license — display of license. (1) A license issued under the provisions of this chapter must be in the form determined by the department and must include:

(a) the name of the examiner;

(b) the name under which the examiner is to operate; and

(c) the number of the license and the date on which the license was issued.

(2) The license must at all times be posted in a conspicuous place in the principal place of business of the examiner.

History: En. Sec. 10, Ch. 185, L. 1983.

37-62-206. Pocket card. Upon the issuance of a license, a pocket card of such size, design, and content as determined by the department must be issued without charge to the examiner, which card is evidence that the examiner is duly licensed.

History: **En. Sec. 11, Ch. 185, L. 1983.**

37-62-207. Continuing education. The department shall establish by rule minimum requirements of professional education and training, consistent with the field of learning and with the standards of professional organizations, for renewal of licenses.

History: **En. Sec. 8, Ch. 185, L. 1983.**

37-62-208. Fees. (1) The department shall adopt and charge nonrefundable application, license, and license renewal fees, commensurate with costs in accordance with 37-1-134.

(2) All fees collected by the department under this section must be deposited in the state special revenue fund for the use of the department in administering this chapter.

History: **En. Sec. 7, Ch. 185, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.**

37-62-209. Internship license. (1) Upon application, payment of fees, and approval by the department, a polygraph intern license must be issued to an applicant and is valid for 12 months.

(2) Each licensed intern must be supervised by a licensed polygraph examiner who shall, in accordance with rules established by the department, file reports concerning intern training.

History: **En. Sec. 3, Ch. 547, L. 1985.**

37-62-210 and 37-62-211 reserved.

37-62-212. Suspension and revocation. An examiner's license may be suspended for a fixed period or may be revoked if, after a hearing before the department, it has been determined by competent evidence that the examiner:

(1) has obtained the license by fraudulent representation;

(2) employs misrepresentation, false promises, or misleading advertising for the purpose of directly or indirectly obtaining business;

(3) is incompetent for any reason to act as an examiner;

(4) has allowed his license to be used by an unlicensed person;

(5) has violated the provisions of this chapter or any rule adopted by the department;

(6) has willfully or negligently aided or abetted another examiner in violating the provisions of this chapter or any rule adopted by the department;

(7) has failed to provide, within a reasonable amount of time, information requested by the department relating to a formal complaint filed with the department involving the examiner;

(8) has been adjudicated by a decree of court to be seriously mentally ill;

(9) has failed to inform the examinee of all specific question areas to be explored before questions are actually asked during an examination;

(10) has conducted an examination without having informed the examinee that:

(a) he has the right to refuse to participate in the examination;

(b) he has the right to halt the examination in progress at any time;

(c) he is not required to answer any questions or give any information; and

(d) any information he volunteers could be used against him or made available to the party requesting the examination unless otherwise agreed to in writing; or

(11) has failed to inform the examinee of the results of an examination if requested.

History: En. Sec. 13, Ch. 185, L. 1983.

Cross-References

Reporting disciplinary actions against licensees, 37-1-105.

Duties of Director, 37-1-121.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-62-213. Hearing. Before refusing an application or suspending or revoking a license, the department shall notify the applicant or examiner by mail not less than 30 days before taking any action. The notice must advise the applicant of the intended action and must include a statement that the applicant or examiner may request a hearing within 20 days of receipt of the notice. If the applicant or examiner requests a hearing within that period, a hearing must be granted, and contested case provisions of the Montana Administrative Procedure Act apply to the hearing. An applicant or examiner who is aggrieved by a final decision in a contested case is entitled to judicial review under the Montana Administrative Procedure Act.

History: En. Sec. 14, Ch. 185, L. 1983.

Cross-References

Administrative Procedure Act, Title 2, ch. 4.

Part 3
Miscellaneous Provisions

37-62-301. Minimum standards for instruments or devices. (1) No person may use or attempt to use any instrument or device for the purpose of detecting deception, verifying truthfulness, or assisting in the reporting of a diagnostic opinion as to deception or truthfulness unless the instrument or device, at a minimum, is capable of visually, permanently, and simultaneously recording indications of an examinee's:

(a) cardiovascular pattern;

(b) respiratory pattern; and

(c) galvanic skin response pattern.

(2) Indications of other psychophysiological changes or bodily responses may also be recorded in addition to the minimum standards provided in subsection (1).

(3) The operation, use, or attempted use by an examiner of an instrument or device that does not meet the minimum requirements provided in subsection (1) is subject to the penalties provided in 37-62-311.

History: En. Sec. 2, Ch. 185, L. 1983.

37-62-302. Inadmissibility of results as evidence. Results of a polygraph examination or other test given by an examiner may not be introduced or admitted as evidence in a court of law.

History: En. Sec. 12, Ch. 185, L. 1983.

Cross-References

Preliminary questions of admissibility, Rule 104, M.R.Ev. (see Title 26, ch. 10).

37-62-303. Pre-test procedure — termination of examination. (1) An examiner may not administer a polygraph examination without first conducting a pre-test interview with the person to be examined. The examinee must be informed of all issues about which he will be examined and which will be reported by the examiner. All questions to be asked during the examination must be written and read verbatim to the examinee during the pre-test interview.

(2) Written, signed, and dated consent must be given by the examinee prior to any polygraph examination.

(3) Upon the request of the examinee, all pre-test procedures or polygraph examinations in progress must terminate immediately. The examiner may, in his discretion, terminate any examination for any reason.

History: En. Sec. 4, Ch. 547, L. 1985.

37-62-304 through 37-62-310 reserved.

37-62-311. Penalty. Any person who violates any of the provisions of this chapter is guilty of a misdemeanor and is punishable by a fine of not more than $500 or by imprisonment in the county jail for a period not to exceed 6 months or both such fine and imprisonment.

History: En. Sec. 15, Ch. 185, L. 1983.

CHAPTERS 63 AND 64

RESERVED

CHAPTER 65

ARCHITECTURE

Part 1 — General

37-65-101. Purpose.
37-65-102. Definitions.
37-65-103. Exemptions.

Part 2 — Board of Architects

37-65-201. Organization — meetings — records.
37-65-202. Compensation of board members — expenses.
37-65-203. Exclusive licensing jurisdiction — no additional fee.
37-65-204. Rulemaking.

Part 3 — Licensing

37-65-301. License required.
37-65-302. Licensure limited to individuals.
37-65-303. Application — examination — issuance of license.
37-65-304. Examination fee — deposit of fee.
37-65-305. Licensing of and solicitation of business by architects from other states.
37-65-306. Annual renewal — fee — continuing education.

37-65-307. Deposit of license fees.
37-65-308. Seal of architect.
37-65-309. Repealed.
37-65-310 through 37-65-320 reserved.
37-65-321. Revocation or suspension of license — grounds — right to notice and hearing.
37-65-322. Penalty.
37-65-323. Injunction.

Chapter Cross-References

Construction contracts, Title 18, ch. 2.

Procurement of architectural, engineering, and land surveying services by governmental entities, Title 18, ch. 8, part 2.

Professional service corporations, Title 35, ch. 4.

Building construction standards, Title 50, ch. 60.

Part 1

General

37-65-101. Purpose. It is hereby declared, as a matter of legislative policy in the state of Montana, that the practice of architecture is a privilege granted by legislative authority and is not a natural right of individuals and that it is necessary, as a matter of such policy and in the interests of the health, safety, and welfare of the people of Montana, to provide laws covering the granting of that privilege and its subsequent use, control, and regulation for the purpose of protecting the public from the unprofessional, improper, unauthorized, and unqualified practice of architecture.

History: En. 66-101.1 by Sec. 1, Ch. 544, L. 1977; R.C.M. 1947, 66-101.1.

37-65-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Architect" means an individual technically and legally qualified to practice architecture and who is authorized under this chapter to practice architecture.

(2) "Board" means the board of architects provided for in 2-15-1871.

(3) "Building" means a structure intended primarily for human occupancy or use.

(4) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(5) "Practice of architecture" means any professional service or creative work requiring the application of advanced knowledge of architectural design, building construction, and standards and involving the constant exercise of discretion and judgment in such activities, in which the safeguarding of life, health, or property is concerned, as consultation, investigation, evaluation, planning, design, or inspection of construction for any public or private building.

(6) "Public building" means any building which the state or any political subdivision thereof maintains for the use of the public.

History: En. Sec. 3, Ch. 158, L. 1917; re-en. Sec. 3231, R.C.M. 1921; re-en. Sec. 3231, R.C.M. 1935; amd. Sec. 1, Ch. 149, L. 1957; amd. Sec. 2, Ch. 439, L. 1973; amd. Sec. 26, Ch. 350, L. 1974; amd. Sec. 2, Ch. 544, L. 1977; R.C.M. 1947, 66-103(2); amd. Sec. 5, Ch. 388, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 490, L. 1983.

37-65-103. Exemptions. (1) Nothing contained in this chapter shall prevent draftsmen, students, clerks of work, superintendents, and other employees of those lawfully practicing as architects under the provisions of this chapter from acting under the instruction, control, or supervision of their employers or to prevent the employment of superintendents of the construction, enlargement, or structural alteration of buildings or any appurtenance thereto.

(2) Nothing contained in this chapter shall be construed to:

(a) apply to alterations to any building which do not involve changes affecting the structural safety thereof or the public health;

(b) prevent the preparation of details and shop drawings by persons other than architects for use in connection with the execution of their work; or

(c) prevent the preparation of drawings or details for fixtures, cabinetwork, furniture, or other interior appliances or equipment or for any work necessary to provide for their installation unless the same involves public health or safety.

(3) None of the acts enumerated in subsections (1) and (2) shall be interpreted or construed as the practice of architecture.

(4) Nothing in this chapter shall be construed to affect or prevent the following, provided that no words, letters, figures, or other device shall be used in such manner as to tend to convey the impression that the person rendering such service is an architect duly registered under this chapter:

(a) consultants, officers, and employees of the United States while engaged solely in the practice of architecture for said government;

(b) professional engineers from performing architectural services which are purely incidental to their engineering practice;

(c) any person from planning, designing, altering, repairing, supervising, or engaging in residential construction consisting of less than eight living units regardless of size or cost or farm buildings which are not intended for use or used as a public building;

(d) the planning, design, alteration, construction, repair, or supervision of construction of a building by its owner if the building is not intended for use or used as a public building.

History: En. Sec. 7, Ch. 158, L. 1917; re-en. Sec. 3235, R.C.M. 1921; re-en. Sec. 3235, R.C.M. 1935; amd. Sec. 2, Ch. 149, L. 1957; amd. Sec. 3, Ch. 439, L. 1973; amd. Sec. 4, Ch. 544, L. 1977; R.C.M. 1947, 66-107(b), (c).

Cross-References

Policy regarding state practice of architecture, 18-2-111.

Part 2
Board of Architects

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1871.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-65-201. Organization — meetings — records. (1) The board must, during the first week in April of each year, elect from among its number a president, secretary, and treasurer and must have a seal.

(2) The president and secretary may administer oaths in the examination of applications for certificates and to witnesses called before the board for the transaction of business under this chapter.

(3) The board shall meet at places the board determines during the first week of April of each year and at other times.

(4) The department must keep a record of proceedings of the board.

(5) The department must keep a register of applicants for a certificate, with the name and age of applicants, the number of years spent in the study of architecture, and whether the applicant was granted a certificate or rejected. The register is prima facie evidence of the matters contained in it.

History: En. Sec. 2, Ch. 158, L. 1917; re-en. Sec. 3230, R.C.M. 1921; re-en. Sec. 3230, R.C.M. 1935; amd. Sec. 25, Ch. 350, L. 1974; R.C.M. 1947, 66-102.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Oath defined, 1-1-201.

Oaths, Title 1, ch. 6.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Public records, Title 2, ch. 6.

Preservation of records, Title 22, ch. 3, part 2.

Duty of Department to keep records, 37-1-101.

Duty of Department to provide facilities, 37-1-101.

Perjury, 45-7-201.

False swearing, 45-7-202.

Disrupting meeting as disorderly conduct, 45-8-101.

37-65-202. Compensation of board members — expenses. Each member of the board is entitled to receive compensation at the rate provided in 37-1-133 and the actual cost of mileage or other reasonable transportation costs, meals, and lodging when engaged in official board business.

History: En. Sec. 9, Ch. 158, L. 1917; re-en. Sec. 3237, R.C.M. 1921; re-en. Sec. 3237, R.C.M. 1935; amd. Sec. 141, Ch. 147, L. 1963; amd. Sec. 2, Ch. 138, L. 1967; amd. Sec. 18, Ch. 93, L. 1969; amd. Sec. 5, Ch. 439, L. 1973; amd. Sec. 28, Ch. 350, L. 1974; amd. Sec. 24, Ch. 439, L. 1975; R.C.M. 1947, 66-109(1); amd. Sec. 30, Ch. 474, L. 1981; amd. Sec. 2, Ch. 490, L. 1983.

37-65-203. Exclusive licensing jurisdiction — no additional fee. The board is vested with exclusive jurisdiction to issue licenses for the privilege of practicing architecture. No other state agency or political subdivision of the state, including counties and municipalities, may levy any fee or tax for such privilege.

History: En. Sec. 10, Ch. 158, L. 1917; re-en. Sec. 3238, R.C.M. 1921; re-en. Sec. 3238, R.C.M. 1935; amd. Sec. 3, Ch. 138, L. 1967; amd. Sec. 29, Ch. 350, L. 1974; amd. Sec. 5, Ch. 544, L. 1977; R.C.M. 1947, 66-110(2).

37-65-204. Rulemaking. The board of architects may adopt, amend, or repeal rules necessary for the implementation and enforcement of this chapter in accordance with the provisions of the Montana Administrative Procedure Act.

History: En. Sec. 9, Ch. 490, L. 1983.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Part 3
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-65-301. License required. Except as provided in this chapter, no person may practice architecture in this state or use the title "architect" or "licensed architect" or any words, letters, figures, or other device indicating or intending to imply that he is an architect, without having qualified under this chapter.

History: En. Sec. 3, Ch. 158, L. 1917; re-en. Sec. 3231, R.C.M. 1921; re-en. Sec. 3231, R.C.M. 1935; amd. Sec. 1, Ch. 149, L. 1957; amd. Sec. 2, Ch. 439, L. 1973; amd. Sec. 26, Ch. 350, L. 1974; amd. Sec. 2, Ch. 544, L. 1977; R.C.M. 1947, 66-103(1); amd. Sec. 3, Ch. 490, L. 1983.

37-65-302. Licensure limited to individuals. No firm, company, partnership, association, corporation, or other similar organization shall be licensed as an architect. Only individuals shall be licensed as architects, but a number of architects constituting a firm may use the collective title "architects" or "licensed architects".

History: En. Sec. 7, Ch. 158, L. 1917; re-en. Sec. 3235, R.C.M. 1921; re-en. Sec. 3235, R.C.M. 1935; amd. Sec. 2, Ch. 149, L. 1957; amd. Sec. 3, Ch. 439, L. 1973; amd. Sec. 4, Ch. 544, L. 1977; R.C.M. 1947, 66-107(a); amd. Sec. 4, Ch. 490, L. 1983.

37-65-303. Application — examination — issuance of license. (1) A person wishing to practice architecture in this state shall apply to the department for a license to do so. A person applying shall have successfully completed the requirement of prerequisites in education, practical experience, and a written examination as prescribed by the board. The examination must be in substantial conformance with the standard national council of architectural registration boards examination and grading procedure, except as modified by board rules.

(2) After examination the department shall, if the candidate has been found qualified, grant a license to the candidate to practice architecture in this state, which may only be granted on the consent of not less than two members of the board, attested by the secretary, and have the seal of the board attached.

History: En. Sec. 3, Ch. 158, L. 1917; re-en. Sec. 3231, R.C.M. 1921; re-en. Sec. 3231, R.C.M. 1935; amd. Sec. 1, Ch. 149, L. 1957; amd. Sec. 2, Ch. 439, L. 1973; amd. Sec. 26, Ch. 350, L. 1974; amd. Sec. 2, Ch. 544, L. 1977; R.C.M. 1947, 66-103(part); amd. Sec. 6, Ch. 388, L. 1979; amd. Sec. 5, Ch. 490, L. 1983.

Cross-References

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Duty of Department to administer and grade examinations, 37-1-101.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-65-304. Examination fee — deposit of fee. (1) Applicants for examination shall pay in advance to the department a fee set by the board, commensurate with the cost, which shall defray the entire examination expense of the candidate. An applicant failing to pass the examination is entitled to reexamination at the next scheduled examination on payment of a reasonable fee prescribed by the board.

(2) The money received from the applicant shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 8, Ch. 158, L. 1917; re-en. Sec. 3236, R.C.M. 1921; re-en. Sec. 3236, R.C.M. 1935; amd. Sec. 140, Ch. 147, L. 1963; amd. Sec. 1, Ch. 138, L. 1967; amd. Sec. 4, Ch. 439, L. 1973; amd. Sec. 27, Ch. 350, L. 1974; R.C.M. 1947, 66-108; amd. Sec. 7, Ch. 388, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

37-65-305. Licensing of and solicitation of business by architects from other states. (1) An architect holding a valid and current license to practice in another state, territory, or country may be granted a license to practice in Montana following presentation of a certificate issued by the national council of architectural registration boards and approved by the board. No arrangement may be made under this section which may lower the standard of practice of architecture in this state. The board may, if considered necessary, require an examination of applicants for a license from other states after careful consideration of the credentials from those states. The board shall by rule establish methods and procedures for investigation of applicants for a license by reciprocity.

(2) A nonresident architect who holds an unexpired license to practice architecture issued by the state in which his principal offices are located may, upon furnishing the board with such additional information or certification as it may require, offer architectural services in this state but may accept no commission or otherwise engage in the practice of architecture within this state until licensed by the board.

History: En. Sec. 3, Ch. 158, L. 1917; re-en. Sec. 3231, R.C.M. 1921; re-en. Sec. 3231, R.C.M. 1935; amd. Sec. 1, Ch. 149, L. 1957; amd. Sec. 2, Ch. 439, L. 1973; amd. Sec. 26, Ch. 350, L. 1974; amd. Sec. 2, Ch. 544, L. 1977; R.C.M. 1947, 66-103(part); amd. Sec. 6, Ch. 490, L. 1983.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Licensing investigation and review — record access, 37-1-135.

37-65-306. Annual renewal — fee — continuing education. (1) A licensed architect in this state who desires to continue the practice of his profession shall annually during the month of July, during the time he continues in this practice:

(a) pay to the department a reasonable fee as prescribed by the board; and

(b) present evidence to the board of compliance with any continuing education requirements imposed by the board.

(2) (a) The board may by rule prescribe continuing education requirements for license renewal. If the board prescribes continuing education requirements, the rules shall provide for the method of compliance, such as:

(i) attendance at approved classroom or seminar-type instruction programs; or

(ii) passing an examination.

(b) If classroom or seminar-type instruction is required, the board shall by rule:

(i) make determinations as to approved programs; and

(ii) prescribe the number of hours required for compliance.

(c) If an examination is required, the board shall by rule prescribe:

(i) the subjects of the examination; and

(ii) the grade required to pass the examination.

History: En. Sec. 10, Ch. 158, L. 1917; re-en. Sec. 3238, R.C.M. 1921; re-en. Sec. 3238, R.C.M. 1935; amd. Sec. 3, Ch. 138, L. 1967; amd. Sec. 29, Ch. 350, L. 1974; amd. Sec. 5, Ch. 544, L. 1977; R.C.M. 1947, 66-110(1); amd. Sec. 8, Ch. 388, L. 1979; (2)En. Sec. 9, Ch. 388, L. 1979.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-65-307. Deposit of license fees. All fees and moneys received by the department for licenses from practicing architects shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 9, Ch. 158, L. 1917; re-en. Sec. 3237, R.C.M. 1921; re-en. Sec. 3237, R.C.M. 1935; amd. Sec. 141, Ch. 147, L. 1963; amd. Sec. 2, Ch. 138, L. 1967; amd. Sec. 18, Ch. 93, L. 1969; amd. Sec. 5, Ch. 439, L. 1973; amd. Sec. 28, Ch. 350, L. 1974; amd. Sec. 24, Ch. 439, L. 1975; R.C.M. 1947, 66-109(2); amd. Sec. 1, Ch. 277, L. 1983.

37-65-308. Seal of architect. Every licensed architect shall have a seal, the impression of which must contain the name of the architect, his or her place of business, and the words “Licensed Architect, State of Montana”, with which he or she shall stamp all drawings and specifications issued from his or her office for use in this state.

History: En. Sec. 5, Ch. 158, L. 1917; re-en. Sec. 3233, R.C.M. 1921; re-en. Sec. 3233, R.C.M. 1935; R.C.M. 1947, 66-105.

Cross-References

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

37-65-309. Repealed. Sec. 12, Ch. 388, L. 1979.

History: En. Sec. 11, Ch. 158, L. 1917; re-en. Sec. 3239, R.C.M. 1921; re-en. Sec. 3239, R.C.M. 1935; amd. Sec. 30, Ch. 350, L. 1974; R.C.M. 1947, 66-111.

37-65-310 through 37-65-320 reserved.

37-65-321. Revocation or suspension of license — grounds — right to notice and hearing. (1) The board may revoke or suspend a license or take other appropriate disciplinary action if satisfactory proof is presented to the board that the licensee:

(a) obtained his license through fraud or misrepresentation;

(b) has been found guilty of fraud or deceit in his professional practice or has been convicted of a felony related to his professional practice of architecture;

(c) has committed acts of gross incompetency or of recklessness in the planning or construction of buildings;

(d) has violated standards of professional conduct adopted by the board;

(e) has departed, in a material respect, from approved plans or specifications without the consent of the owner or his authorized representative;

(f) except to the extent that the architect reasonably relied upon the advice of another professional in the field of building design and construction, has violated the building codes of this state or a political subdivision;

(g) has aided or abetted an unlicensed person to violate or evade this chapter; or

(h) has sealed or signed plans or specifications or other professional work not prepared under his direct supervision and control.

(2) A license may not be revoked or suspended except under the contested case provisions of the Montana Administrative Procedure Act.

(3) Charges of fraud, deceit, gross incompetence, negligence, or professional misconduct may be brought by any person against any licensee. Such charges shall be in writing, sworn to by the person making them, and filed with the secretary of the board. All charges, unless dismissed by the board as unfounded or trivial, shall be set for hearing within 3 months of filing with the secretary.

History: En. Sec. 12, Ch. 158, L. 1917; re-en. Sec. 3240, R.C.M. 1921; re-en. Sec. 3240, R.C.M. 1935; amd. Sec. 3, Ch. 149, L. 1957; amd. Sec. 4, Ch. 138, L. 1967; amd. Sec. 6, Ch. 439, L. 1973; amd. Sec. 31, Ch. 350, L. 1974; R.C.M. 1947, 66-112; amd. Sec. 7, Ch. 490, L. 1983.

Cross-References

Licensure to follow contested case procedure, 2-4-631.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of Director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunction, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Building construction standards, Title 50, ch. 60.

37-65-322. Penalty. Any person who uses the title "architect" or "licensed architect" or any other words, letters, figures, or device indicating or intending to imply that the person using the same is an architect or who shall engage in the practice of architecture within the meaning of this chapter or shall accept compensation for rendering architectural service without first having complied with the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $500 or more than $1,000 or by imprisonment in the county jail for not less than 30 days or more than 6 months or by both such fine and imprisonment. Any person convicted a second time for any violation of this chapter shall be punished by both such fine and imprisonment. The district court shall have jurisdiction of all prosecutions brought hereunder.

History: En. Sec. 6, Ch. 158, L. 1917; re-en. Sec. 3234, R.C.M. 1921; re-en. Sec. 3234, R.C.M. 1935; amd. Sec. 4, Ch. 149, L. 1957; amd. Sec. 3, Ch. 544, L. 1977; R.C.M. 1947, 66-106(1); amd. Sec. 8, Ch. 490, L. 1983.

37-65-323. Injunction. Whenever the board of architects has reasonable cause to believe that a person is violating any provision of this chapter or rule of the board, it may, in addition to the remedies provided in 37-65-322 and without prejudice thereto, bring an action in the district court for the county in which the violation is occurring to enjoin such person from continuing to engage in such violation or from doing any act in furtherance thereof.

History: En. Sec. 6, Ch. 158, L. 1917; re-en. Sec. 3234, R.C.M. 1921; re-en. Sec. 3234, R.C.M. 1935; amd. Sec. 4, Ch. 149, L. 1957; amd. Sec. 3, Ch. 544, L. 1977; R.C.M. 1947, 66-106(2).

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Disciplinary authority of boards — injunction, 37-1-136.

CHAPTER 66

LANDSCAPE ARCHITECTURE

Part 1 — General

37-66-101. Short title.
37-66-102. Purpose.
37-66-103. Definitions.
37-66-104. Acts declared unlawful.
37-66-105. Exemptions.

Part 2 — Board of Landscape Architects

37-66-201. Organization — compensation.
37-66-202. Rulemaking power.

Part 3 — Licensing

37-66-301. License required.
37-66-302. Illegal use of title.
37-66-303. Licensing restricted to individuals — partnerships — local business licensing.
37-66-304. Qualifications not required.
37-66-305. Examinations.
37-66-306. Reciprocity.
37-66-307. Annual renewal — withdrawal — deposit of fees.
37-66-308. Display of license — seal of landscape architect.
37-66-309 through 37-66-320 reserved.
37-66-321. Revocation or suspension of license — grounds — reinstatement.
37-66-322. Penalty.
37-66-323. Prosecution.

Part 1

General

37-66-101. Short title. This chapter shall be known and cited as the "Landscape Architecture Registration and Licensing Act".

History: En. 66-3801 by Sec. 1, Ch. 476, L. 1975; R.C.M. 1947, 66-3801; amd. Sec. 4, Ch. 325, L. 1979.

37-66-102. Purpose. The purpose of this chapter is to safeguard life, health, property, and to promote the public welfare by requiring that only properly qualified persons shall be licensed to practice landscape architecture in this state.

History: En. 66-3802 by Sec. 2, Ch. 476, L. 1975; R.C.M. 1947, 66-3802.

37-66-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of landscape architects provided for in 2-15-1872.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Landscape architect" means a person who holds a certificate to practice landscape architecture in the state of Montana under the provisions of this chapter.

(4) "Landscape architecture" means performing services in conjunction with all aspects of the planning and design of the exterior environment for human use and environmental protection. It includes regional planning of natural resources, urban and rural planning and design, institutional design, park and recreation planning and design, and the preparation of project master plans. It is the design discipline specifically oriented to addressing the problems involved in adapting man's uses of land to the characteristics of the exterior environment both functionally and aesthetically. It includes the preparation of contract documents, construction specifications, construction cost estimates, and project contracts. It includes contract negotiations, project management, and construction management. The term does not include the design of structures or facilities with separate and self-contained purposes that are ordinarily included in the practice of engineering or architecture and does not include the making of land surveys or final land plats for official approval or recording.

History: En. 66-3803 by Sec. 3, Ch. 476, L. 1975; R.C.M. 1947, 66-3803; amd. Sec. 24, Ch. 22, L. 1979; amd. Sec. 5, Ch. 325, L. 1979; amd. Sec. 3, Ch. 274, L. 1981.

37-66-104. Acts declared unlawful. It shall be unlawful for any person to:

(1) offer to practice or hold himself out as entitled to practice landscape architecture unless duly licensed and registered under this chapter;

(2) present as his own the license of another;

(3) give false or forged evidence to the board or any member thereof in obtaining a license;

(4) falsely impersonate any other practitioner of like or different name;

(5) otherwise violate any of the provisions of this chapter.

History: En. 66-3812 by Sec. 14, Ch. 476, L. 1975; R.C.M. 1947, 66-3812(1).

37-66-105. Exemptions. (1) None of the provisions of this chapter prevent employees of those lawfully practicing as landscape architects from acting under the instruction, control, or supervision of their employers.

(2) None of the provisions of this chapter apply to any business conducted in this state by any horticulturist, nurseryman, or landscape nurseryman, plantsman, gardener, landscape gardener, landscape designer, landscape artist, landscape contractor, or land use planner, as these terms are generally used. However, no such person shall use the title "landscape architect", "landscape architecture", or any description tending to convey the impression that he is a licensed landscape architect unless he is licensed as provided in this chapter.

(3) This chapter does not apply to architects, professional engineers, and professional land surveyors licensed to practice their respective professions.

(4) None of the provisions of this chapter shall apply to any person performing any of the services mentioned in this chapter upon his own property.

(5) None of the provisions of this chapter shall require the hiring of a landscape architect.

History: En. 66-3808 by Sec. 10, Ch. 476, L. 1975; R.C.M. 1947, 66-3808; amd. Sec. 52, Ch. 83, L. 1989.

Cross-References

Architects, Title 37, ch. 65.

Engineers and land surveyors, Title 37, ch. 67.

Part 2

Board of Landscape Architects

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1872.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-66-201. Organization — compensation. (1) At its first meeting of every calendar year, the board shall elect from among its members a chairman, who may appoint a secretary. The secretary may or may not be a member of the board.

(2) The members of the board are entitled to receive compensation and travel expenses as provided in 37-1-133.

History: En. 82A-1602.30 by Sec. 8, Ch. 476, L. 1975; amd. Sec. 24, Ch. 453, L. 1977; R.C.M. 1947, 82A-1602.30(5); amd. Sec. 6, Ch. 325, L. 1979; amd. Sec. 31, Ch. 474, L. 1981; amd. Sec. 1, Ch. 89, L. 1989.

37-66-202. Rulemaking power. The board may promulgate such rules, including setting of fees, as are necessary in the performance of its duties and may hear contested cases arising under this chapter.

History: En. 82A-1602.30 by Sec. 8, Ch. 476, L. 1975; amd. Sec. 24, Ch. 453, L. 1977; R.C.M. 1947, 82A-1602.30(4).

Cross-References

Adoption and publication of rules, Title 2, ch. 4.

Contested case procedure, Title 2, ch. 6.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-66-301. License required. In order to safeguard human health and property and to promote the public welfare, any person in either public or private capacity practicing or offering to practice landscape architecture for hire shall be required to submit evidence that he is qualified to so practice and shall be registered under the provisions of this chapter.

History: En. 66-3804 by Sec. 4, Ch. 476, L. 1975; R.C.M. 1947, 66-3804.

37-66-302. Illegal use of title. No person may use the designation “landscape architect” or “landscape architecture” or advertise any title or description tending to convey the impression that he is a landscape architect or practicing landscape architecture unless such person is a landscape architect licensed with the board.

History: En. 66-3810 by Sec. 12, Ch. 476, L. 1975; R.C.M. 1947, 66-3810(part).

37-66-303. Licensing restricted to individuals — partnerships — local business licensing. (1) Certificates of licensing may be issued to natural persons only, but nothing contained in this chapter prevents a duly licensed landscape architect from performing his services for a corporation, firm, partnership, or association.

(2) Each partner in a partnership of landscape architects shall be licensed to practice landscape architecture. Subject to this requirement, a partnership of landscape architects may use a partnership name if the name consists of:

(a) the names of two or more landscape architects; or

(b) the names of one or more landscape architects and one or more professional engineers, architects, or planners.

(3) A person applying to the licensing official of any county or city for a business license to practice landscape architecture shall, at the time of application, exhibit to the licensing official satisfactory evidence under the seal of the board and the hand of its secretary that the applicant possesses a current registration with the board. The license may not be granted until such evidence is presented.

History: En. 66-3809 by Sec. 11, Ch. 476, L. 1975; amd. Sec. 33, Ch. 101, L. 1977; R.C.M. 1947, 66-3809.

37-66-304. Qualifications not required. Each applicant must be admitted to the examination without prerequisite qualifications.

History: En. 66-3805 by Sec. 5, Ch. 476, L. 1975; R.C.M. 1947, 66-3805; amd. Sec. 7, Ch. 325, L. 1979.

37-66-305. Examinations. (1) Examinations for licensure shall be given by the board at least once each year.

(2) Each applicant for licensure as a landscape architect is required to establish by examination his competency to practice the profession of landscape architecture.

(3) The examination given must be the uniform national examination prescribed by the council of landscape architectural boards.

History: En. 66-3806 by Sec. 6, Ch. 476, L. 1975; R.C.M. 1947, 66-3806; amd. Sec. 8, Ch. 325, L. 1979.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

37-66-306. Reciprocity. The board may certify for licensure without examination an applicant who is legally registered as a landscape architect in any other state or country and who is certified by the council of landscape architectural registration boards.

History: En. 66-3807 by Sec. 9, Ch. 476, L. 1975; R.C.M. 1947, 66-3807(4); amd. Sec. 9, Ch. 325, L. 1979.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-66-307. Annual renewal — withdrawal — deposit of fees. (1) Certification of licensure or renewal of registration expire on the last day of June following their issuance or renewal. Renewal may be effected during the month of June by payment to the department of the required fee. The board shall issue current renewal registration to each landscape architect promptly upon payment of the annual renewal registration fee.

(2) Any registrant in good standing, upon ceasing to practice landscape architecture, may suspend his license by giving written notice to the board. Thereafter, he may resume practice upon payment of the then-current fee and upon approval by the board.

(3) All fees received under the provisions of this chapter shall be deposited in the state special revenue fund by the department. The moneys collected shall be used by the department to carry out the purpose, duties, and responsibilities of the chapter, subject to 37-1-101(6).

History: En. 66-3807 by Sec. 9, Ch. 476, L. 1975; R.C.M. 1947, 66-3807(1) thru (3); amd. Sec. 10, Ch. 325, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-66-308. Display of license — seal of landscape architect. (1) Each holder of a license shall display it in his principal office, place of business, or place of employment.

(2) Each landscape architect shall have a seal approved by the board, which shall contain the name of the landscape architect and the words "Licensed Landscape Architect, State of Montana" and such other words or figures as the board considers necessary. All drawings and title pages of specifications prepared by such landscape architect or under the supervision of such landscape architect shall be stamped with his seal. Nothing contained herein shall be construed to permit the seal of a landscape architect to serve as a substitute for the seal of a licensed architect, a licensed professional engineer, or a licensed professional land surveyor.

History: En. 66-3810 by Sec. 12, Ch. 476, L. 1975; R.C.M. 1947, 66-3810(part); amd. Sec. 53, Ch. 83, L. 1989.

Cross-References

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

37-66-309 through 37-66-320 reserved.

37-66-321. Revocation or suspension of license — grounds — reinstatement. (1) The board may revoke or suspend the license of any landscape architect upon the following grounds:

(a) fraud or deception in procuring the certification or in passing any of the examinations prescribed by this chapter;

(b) conviction of a felony by a court of competent jurisdiction. However, the right to a revoked or suspended license is regained upon termination of state supervision over the licensee.

(c) gross incompetency;

(d) fraud or deceit in the performance of official duties;

(e) willful violation of any of the provisions of this chapter or any of the rules promulgated by the board under the authority of this chapter.

(2) The board may reinstate any revoked or suspended certification upon such terms as it may impose.

History: En. 66-3811 by Sec. 13, Ch. 476, L. 1975; R.C.M. 1947, 66-3811.

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Probation, parole, and clemency, Title 46, ch. 23.

37-66-322. Penalty. A person convicted of violating any of the provisions of this chapter shall be fined not to exceed $500. Each violation is considered a separate offense for purposes of this section.

History: En. 66-3812 by Sec. 14, Ch. 476, L. 1975; R.C.M. 1947, 66-3812(2).

37-66-323. Prosecution. All violations of this chapter, when reported to the board and duly substantiated by affidavits or other satisfactory evidence, shall be investigated by it. If the allegation is found to be true, the board shall report such violations to the county attorney of the county in which the violation occurred and request prompt prosecution.

History: En. 66-3813 by Sec. 15, Ch. 476, L. 1975; R.C.M. 1947, 66-3813.

Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Affidavits, Title 26, ch. 1, part 10.

CHAPTER 67

ENGINEERS AND LAND SURVEYORS

Part 1 — General

37-67-101. Definitions.
37-67-102. Representation as practitioner to be construed as practice.
37-67-103. Exemptions.

Part 2 — Board of Professional Engineers and Professional Land Surveyors

37-67-201. Organization — meetings — quorum — seal.
37-67-202. Rulemaking and subpoena power.
37-67-203. Compensation of board members — expenses.
37-67-204. Record of proceedings — register of applicants.

Part 3 — Licensing

37-67-301. License required to practice or offer to practice.
37-67-302. Practice without a license a public nuisance.
37-67-303. Application — contents — fees.
37-67-304. Municipality may not impose fee.
37-67-305. General qualifications of applicants for registration as professional engineer or engineer-in-training.
37-67-306. Qualifications of applicant for registration as professional engineer.
37-67-307. Qualifications of applicant for registration as engineer-in-training.
37-67-308. General qualifications of applicants for registration as professional land surveyor or land surveyor-in-training.
37-67-309. Qualifications of applicant for registration as professional land surveyor.
37-67-310. Qualifications of applicant for registration as land surveyor-in-training.
37-67-311. Examinations.
37-67-312. Licensure of professional engineers without examination by comity or endorsement.
37-67-313. Comity consideration for land surveyors from other states.
37-67-314. Issuance of certificates — seal of professional engineer or professional land surveyor — enrollment card for trainees.
37-67-315. Biennial renewal — fee — statement of competency.
37-67-316. Replacement of lost or destroyed certificate.
37-67-317. Deposit of moneys collected.
37-67-318. Roster of licensees to be published by department.
37-67-319. Temporary permits for nonresident practitioners.

37-67-320. Practice by partnerships and corporations.
37-67-321. Emeritus status.
37-67-322 through 37-67-330 reserved.
37-67-331. Revocation, suspension, or refusal to renew certificate — grounds — procedure — reinstatement.
37-67-332. Violations — penalties — enforcement.

Chapter Cross-References

Construction contracts, Title 18, ch. 2.

Procurement of architectural, engineering, and land surveying services by governmental entities, Title 18, ch. 8, part 2.

Professional service corporations, Title 35, ch. 4.

Exemption of engineers from licensure as sanitarian, 37-40-102.

Building construction standards, Title 50, ch. 60.

Corner Recordation Act of Montana — surveys and coordinates, Title 70, ch. 22.

Part 1
General

37-67-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of professional engineers and professional land surveyors provided for in 2-15-1873.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Engineer-in-training" means a person who complies with the requirements for education, experience, and character and has passed an examination in the fundamental engineering subjects, as provided in this chapter.

(4) "Land surveyor-in-training" means a person who has qualified for, taken, and passed an examination on the basic disciplines of land surveying as provided in this chapter.

(5) "Practice of engineering" means any service or creative work the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, planning the use of water, teaching of advanced engineering subjects, engineering surveys, and the inspection of construction for the purpose of assuring compliance with drawings and specifications; any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of mechanical, electrical, hydraulic, pneumatic, or thermal nature insofar as they involve safeguarding life, health, or property and including such other professional services as may be necessary to the planning, progress, and completion of any engineering services. The term does not include the work ordinarily performed by persons who operate or maintain machinery or equipment, communication lines, signal circuits, electric powerlines, or pipelines.

(6) "Practice of land surveying" means any service or work, the performance of which requires the application of special knowledge of the principles of mathematics, physical sciences, applied sciences, and:

(a) the principles of property boundary law to the recovery and preservation of evidence pertaining to earlier land surveys;

(b) teaching of land surveying subjects;

(c) measurement and allocation of lines, angles, elevations, and coordinate systems;

(d) location of natural and manmade features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water, including such work for the determination of areas and volumes;

(e) monumenting of property boundaries;

(f) platting and layout of lands and the subdivisions thereof, including the alignment and grades of streets and roads therein; and

(g) preparation and perpetuation of maps, plats, field note records, and property descriptions.

(7) "Professional engineer" means a person who, by reason of his special knowledge and use of the mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and engineering experience, is qualified to practice engineering and who has been duly registered and licensed as a professional engineer by the board.

(8) "Professional land surveyor" means a person who has been duly registered and licensed as a land surveyor by the board and is a professional specialist in the technique, analysis, and application of measuring land, skilled and educated in the principles of mathematically related physical and applied sciences, and relevant requirements of law for adequate evidence and all requisites to the surveying of real property and is engaged in the practice of land surveying as herein defined.

(9) "Responsible charge" means direct charge and control and personal supervision either of engineering work or of land surveying, as the case may be. Only professional engineers or professional land surveyors may legally assume responsible charge under this chapter.

History: En. Sec. 2, Ch. 366, L. 1975; R.C.M. 1947, 66-2350(part); amd. Sec. 25, Ch. 22, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 2, Ch. 553, L. 1985.

37-67-102. Representation as practitioner to be construed as practice. (1) A person shall be construed to practice or offer to practice engineering, within the meaning and intent of this chapter, who practices any branch of the profession of engineering or who by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be a professional engineer or through the use of some other title implies that he is a professional engineer or that he is registered under this chapter or who holds himself out as able to perform or who does perform any engineering service or work or any other service designated by the practitioner which is recognized as engineering.

(2) Any person shall be construed to practice or offer to practice land surveying, within the meaning and intent of this chapter, who engages in land surveying or who by verbal claim, sign, letterhead, card, or in any other way

represents himself to be a professional land surveyor or through the use of some other title implies that he is a professional land surveyor or who represents himself as able to perform or who does perform any land surveying service or work or any other service designated by the practitioner which is recognized as land surveying.

History: En. 66-2369 by Sec. 17, Ch. 366, L. 1975; R.C.M. 1947, 66-2369; amd. Sec. 3, Ch. 553, L. 1985.

37-67-103. Exemptions. The following are exempt from coverage under this chapter:

(1) the practice of any other legally recognized professions or trades;

(2) the mere execution of work by a contractor, as distinguished from its planning or design or the supervision of the construction of work as a foreman or superintendent;

(3) the work of an employee or a subordinate of a person holding a certificate of registration under this chapter or an employee of a person practicing lawfully under this chapter, provided such work does not include final engineering or land surveying designs or decisions and is done under the direct supervision of a person holding a certificate of registration under this chapter or a person practicing lawfully under this chapter;

(4) the practice of professional engineering by licensed architects where the practice is purely incidental to their practice of architecture.

History: En. 66-2367 by Sec. 15, Ch. 366, L. 1975; R.C.M. 1947, 66-2367; amd. Sec. 4, Ch. 553, L. 1985.

Part 2

Board of Professional Engineers and Professional Land Surveyors

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1873.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-67-201. Organization — meetings — quorum — seal. (1) The board shall hold at least two regular meetings each year. Special meetings shall be held at such time as the rules of the board may provide. Notice of all meetings shall be given in such manner as the rules may provide.

(2) The board shall elect annually the following officers: a chairman, a vice-chairman, and a secretary.

(3) A quorum of the board shall consist of not less than five members.

(4) The board shall adopt and have an official seal.

History: (1) thru (3)En. Sec. 8, Ch. 150, L. 1957; Sec. 66-2331, R.C.M. 1947; redes. 66-2352 by Sec. 3, Ch. 366, L. 1975; amd. Sec. 1, Ch. 317, L. 1977; Sec. 66-2352, R.C.M. 1947; (4)En. Sec. 9, Ch. 150, L. 1957; amd. Sec. 3, Ch. 282, L. 1969; Sec. 66-2332, R.C.M. 1947; redes. 66-2353 by Sec. 3, Ch. 366, L. 1975; Sec. 66-2353, R.C.M. 1947; R.C.M. 1947, 66-2352, 66-2353(part); amd. Sec. 4, Ch. 408, L. 1979.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Duty of Department to provide facilities, 37-1-101.

Disrupting meeting as disorderly conduct, 45-8-101.

37-67-202. Rulemaking and subpoena power. (1) The board shall have the power to adopt and amend all rules, including rules of procedure, not inconsistent with the constitution and laws of this state, which may be reasonably necessary for the proper performance of its duties and the regulation of the proceedings before it.

(2) In carrying into effect the provisions of this chapter, the board, under the hand of its chairman and the seal of the board, may subpoena witnesses and compel their attendance and also may require the production of books, papers, documents, etc., in a case involving the revocation of registration or practicing or offering to practice without registration. Any member of the board may administer oaths or affirmations to witnesses appearing before the board. If any person shall refuse to obey any subpoena so issued or shall refuse to testify or produce any books, papers, or documents, the board may present its petition to the district court setting forth the facts, and thereupon such court shall, in a proper case, issue its subpoena to such person requiring his attendance before such authority and there to testify or to produce such books, papers, and documents as may be deemed necessary and pertinent by the board. Any person failing or refusing to obey the subpoena or order of the court may be proceeded against in the same manner as for refusal to obey any other subpoena or order of said court.

History: **En. Sec. 9, Ch. 150, L. 1957; amd. Sec. 3, Ch. 282, L. 1969; Sec. 66-2332, R.C.M. 1947; redes. 66-2353 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2353(part).**

Cross-References

Oath defined, 1-1-201.

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Oaths, Title 1, ch. 6.

Power of agencies to issue subpoenas, 2-4-104.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Power of hearing officer to issue subpoenas, 2-4-611.

Allocation for administrative purposes only, 2-15-121.

Quasi-judicial boards, 2-15-124.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.

Duties of boards, 37-1-131.

Perjury, 45-7-201.

False swearing, 45-7-202.

37-67-203. Compensation of board members — expenses. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: **En. Sec. 6, Ch. 150, L. 1957; Sec. 66-2329, R.C.M. 1947; amd. Sec. 40, Ch. 439, L. 1975; redes. 66-2351 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2351; amd. Sec. 32, Ch. 474, L. 1981.**

37-67-204. Record of proceedings — register of applicants. (1) The department shall keep a record of its proceedings and a register of the board's proceedings.

(2) The department shall keep a register of applicants for registration, which shall show:

(a) the name, age, and residence of each applicant;
(b) the date of the application;
(c) the place of business of the applicant;
(d) his educational and other qualifications;
(e) the branch or branches of engineering in which the applicant qualified;
(f) whether an examination was required;
(g) whether the applicant was rejected;

(h) whether a certificate of registration was granted;
(i) the date of the action of the board; and
(j) other information considered necessary by the board.

(3) The records of the department are prima facie evidence of the proceedings of the board, and a transcript thereof, certified by the department, is admissible in evidence as if the original were produced.

History: **En. Sec. 11, Ch. 150, L. 1957; Sec. 66-2334, R.C.M. 1947; amd. Sec. 27, Ch. 93, L. 1969; amd. Sec. 217, Ch. 350, L. 1974; redes. 66-2355 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2355.**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records, Title 2, ch. 6.

Preservation of records, Title 22, ch. 3, part 2.

Contents of writings, recordings, and photographs, Article X, M.R.Ev. (see Title 26, ch. 10).

Duty of Department to keep records, 37-1-101.

Part 3
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-67-301. License required to practice or offer to practice. In order to safeguard life, health, and property and to promote the public welfare, any person in either public or private capacity practicing or offering to practice engineering or land surveying shall hereafter be required to submit evidence that he is qualified so to practice and shall be registered as hereinafter provided. From and after January 1, 1958, it shall be unlawful for any person to practice or to offer to practice in this state engineering or land surveying, as defined in this chapter, or to use in connection with his name or otherwise assume, use, or advertise any title or description tending to convey the impression that he is a professional engineer or a professional land surveyor unless such person has been duly registered under the provisions of this chapter.

History: **En. Sec. 1, Ch. 150, L. 1957; Sec. 66-2324, R.C.M. 1947; redes. 66-2349 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2349; amd. Sec. 6, Ch. 553, L. 1985.**

Cross-References

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-67-302. Practice without a license a public nuisance. The practice of engineering or land surveying, as defined herein, without a license is hereby declared to be a public nuisance.

History: **En. Sec. 9, Ch. 150, L. 1957; amd. Sec. 3, Ch. 282, L. 1969; Sec. 66-2332, R.C.M. 1947; redes. 66-2353 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2353(part).**

Cross-References

Nuisances, Title 27, ch. 30.

37-67-303. Application — contents — fees. (1) Applications for registration shall be on forms prescribed by the board and furnished by the department, shall contain statements made under oath showing the applicant's education and a detailed summary of his technical work, and shall contain the required references.

(2) The fee for engineer-in-training is as prescribed by the board and shall accompany the application and shall include the cost of one examination. No additional fee is required for issuance of a certificate.

(3) The application fee for registration as a professional engineer is as prescribed by the board for those holding an engineer-in-training certificate validated for Montana. For those holding a valid engineer-in-training certificate from some other state, the application fee is as prescribed by the board, which includes cost of verification of engineer-in-training certification and one examination. Upon approval of application for registration as a professional engineer, an additional fee equal to the existing renewal fee must be paid before issuance of a certificate as a professional engineer.

(4) The department, subject to approval by the board, may, on approval of the application, payment of a fee as prescribed by the board and payment of an additional fee equal to the appropriate renewal fee, issue a certificate of registration as a professional engineer to a person who holds a certificate of qualification or registration issued to him by the committee on national engineering certification of the national council of engineering examiners or by a state, territory, or possession of the United States or by another country if the applicant's qualifications meet the requirements of this chapter and the rules of the board.

(5) The fee for land surveyor-in-training is as prescribed by the board, which shall accompany the application and shall include the cost of one examination. No additional fee is required for issuance of a certificate.

(6) The application fee for registration as a professional land surveyor is as prescribed by the board for those holding a land surveyor-in-training certificate validated in Montana. For those holding a valid land surveyor-in-training certificate from some other state, the application fee is as prescribed by the board, which includes cost of verification of the certification. Upon approval of application for registration as a professional land surveyor, an additional fee equal to the existing renewal fee must be paid before issuance of a certificate as a professional land surveyor.

(7) The application fee for registration as both a professional engineer and professional land surveyor is as prescribed by the board for those holding engineer-in-training and land surveyor-in-training certificates validated in Montana. For those holding valid engineer-in-training and land surveyor-in-training certificates from another state, the application fee is as prescribed by the board. The fee shall accompany the application. Upon approval of application for registration as a professional engineer and professional land surveyor, an additional fee equal to the existing renewal fee must be paid before issuance of a certificate.

(8) If the board denies issuance of a certificate of registration to any applicant, the initial fee deposited shall be retained as an application fee.

History: En. Sec. 14, Ch. 150, L. 1957; Sec. 66-2337, R.C.M. 1947; amd. Sec. 5, Ch. 282, L. 1969; amd. Sec. 2, Ch. 364, L. 1971; amd. Sec. 219, Ch. 350, L. 1974; amd. Sec. 7, Ch. 215, L. 1975; redes. 66-2358 by Sec. 6, Ch. 366, L. 1975; amd. Sec. 21, Ch. 101, L. 1977; amd. Sec. 3, Ch. 317, L. 1977; R.C.M. 1947, 66-2358(1) thru (8); amd. Sec. 5, Ch. 408, L. 1979;

amd. Sec. 66, Ch. 345, L. 1981; amd. Sec. 1, Ch. 489, L. 1981; amd. Sec. 7, Ch. 553, L. 1985; amd. Sec. 1, Ch. 72, L. 1987.

Cross-References

Oath defined, 1-1-201.

Proof of execution, Title 1, ch. 5, part 3.

Power of notary to take acknowledgments, 1-5-416.

Oaths, Title 1, ch. 6.

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Perjury, 45-7-201.

False swearing, 45-7-202.

37-67-304. Municipality may not impose fee. No registration or license fee or tax may be imposed by a municipality or by any other political subdivision of the state on a person registered under this chapter.

History: En. Sec. 14, Ch. 150, L. 1957; Sec. 66-2337, R.C.M. 1947; amd. Sec. 5, Ch. 282, L. 1969; amd. Sec. 2, Ch. 364, L. 1971; amd. Sec. 219, Ch. 350, L. 1974; amd. Sec. 7, Ch. 215, L. 1975; redes. 66-2358 by Sec. 6, Ch. 366, L. 1975; amd. Sec. 21, Ch. 101, L. 1977; amd. Sec. 3, Ch. 317, L. 1977; R.C.M. 1947, 66-2358(9).

37-67-305. General qualifications of applicants for registration as professional engineer or engineer-in-training. To be eligible for admission to examination for professional engineer or engineer-in-training, an applicant must be of good character and reputation. The applicant must submit five references with his application for registration as a professional engineer; three references shall be professional engineers with personal knowledge of his engineering experience. In the case of an application for certification as an engineer-in-training, the applicant must submit three character references.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(part).

37-67-306. Qualifications of applicant for registration as professional engineer. The following is considered minimum evidence satisfactory to the board that the applicant is qualified for registration as a professional engineer:

(1) A graduate of an engineering or engineering technology curriculum of 4 years or more approved by the board as being of satisfactory standing, with a specific record of an additional 4 years or more of progressive experience on engineering projects of a grade and character which indicate to the board that the applicant may be competent to practice engineering, shall be admitted to an 8-hour written examination in the fundamentals of engineering and an 8-hour written examination in the principles and practices of engineering. Upon passing such examinations, the applicant shall be granted a certificate of registration to practice engineering in this state provided he is otherwise qualified.

(2) A graduate of a related science curriculum of 4 years or more, other than engineering or engineering technology, with a specific record of 8 years or more of progressive experience on engineering projects of a grade and character which indicate to the board that the applicant may be competent to practice engineering, may be admitted to an 8-hour written examination in the fundamentals of engineering and an 8-hour written examination in the principles and practices of engineering. Upon passing such examinations, the applicant shall be granted a certificate of registration to practice engineering in this state provided he is otherwise qualified.

(3) A graduate of an engineering or related science curriculum of 4 years or more with a specific record of 20 years or more of progressive experience on engineering projects, of which at least 10 years have been in charge of important engineering projects, of a grade and character which indicate to the board that the applicant may be competent to practice engineering shall be admitted to an 8-hour written examination in the principles and practices of engineering. Upon passing such examination, the applicant shall be granted a certificate of registration to practice engineering in this state provided he is otherwise qualified.

(4) Engineering teaching in a college or university offering an approved engineering curriculum of 4 years or more may be considered as engineering experience in these requirements provided research, product development, or consulting has been a concurrent activity.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(part); amd. Sec. 2, Ch. 59, L. 1985.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-67-307. Qualifications of applicant for registration as engineer-in-training. The following shall be considered as minimum evidence that the applicant is qualified for certification as an engineer-in-training:

(1) A graduate of an engineering or engineering technology curriculum of 4 years or more, approved by the board as being of satisfactory standing, shall be admitted to an 8-hour written examination in the fundamentals of engineering. Upon passing such examination, the applicant shall be certified or enrolled as an engineer-in-training if he is otherwise qualified.

(2) A graduate of a related science curriculum of 4 years or more, other than engineering or engineering technology, with a specific record of 4 or more years of progressive experience on engineering projects of a grade and character satisfactory to the board shall be admitted to an 8-hour written examination in the fundamentals of engineering. Upon passing such examination, the applicant shall be certified or enrolled as an engineer-in-training if he is otherwise qualified.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(1)(b); amd. Sec. 1, Ch. 59, L. 1985.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-67-308. General qualifications of applicants for registration as professional land surveyor or land surveyor-in-training. (1) To be eligible for admission to examination for professional land surveyor or land surveyor-in-training, an applicant must be of good character and reputation. The applicant shall submit five references with his application for registration as a professional land surveyor, three of which references shall be professional land surveyors having personal knowledge of his land surveying experience. In the case of an application for certification as a land surveyor-in-training, the applicant shall submit three references, one of whom shall be a professional land surveyor having personal knowledge of the applicant's land surveying experience.

(2) The evaluation of a land surveyor applicant's qualifications involves a consideration of his education, technical and land surveying experience, exhibits of land surveying projects which he has been in charge of, recommendations by references, and a reviewing of these categories. The board may require an interview if it considers one necessary.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(part); amd. Sec. 2, Ch. 489, L. 1981; amd. Sec. 1, Ch. 354, L. 1983; amd. Sec. 8, Ch. 553, L. 1985; amd. Sec. 2, Ch. 72, L. 1987.

Cross-References

Licensing investigation and review — record access, 37-1-135.

37-67-309. Qualifications of applicant for registration as professional land surveyor. One of the following shall be considered as minimum evidence to the board that the applicant is qualified for registration as a professional land surveyor:

(1) have a bachelor of science degree in a board-approved curriculum that must contain a minimum of 40 quarter credit hours in surveying techniques, principles, and practices, and present evidence satisfactory to the board that, in addition thereto, he has had at least 4 years of combined office and field experience in land surveying, with a minimum of 3 years of progressive experience on land surveying projects under the direct supervision of a professional land surveyor, and have passed the examinations as required by the board;

(2) have 2 years of formal education in a board-approved curriculum above high school level with at least 90 quarter credit hours that must contain a minimum of 40 quarter credit hours in surveying techniques, principles, and practices, or equivalent semester hours passed, or the equivalent approved by the board, and present evidence satisfactory to the board that, in addition thereto, he has had at least 6 years of combined office and field experience in land surveying satisfactory to the board, with a minimum of 4 years of progressive experience on land surveying projects under the direct supervision of a professional land surveyor, and have passed the examinations as required by the board;

(3) have a bachelor of science degree in a board-approved curriculum and present evidence satisfactory to the board that, in addition thereto, he has had at least 6 years of combined office and field experience in land surveying, with a minimum of 4 years of progressive experience on land surveying projects under the direct supervision of a professional land surveyor, and have passed the examinations as required by the board; or

(4) present evidence satisfactory to the board that he has had at least 10 years of combined office and field experience in land surveying satisfactory to the board, with a minimum of 6 years of progressive experience on land surveying projects under the direct supervision of a professional land surveyor, and has passed the examinations as required by the board.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(part); amd. Sec. 2, Ch. 354, L. 1983; amd. Sec. 9, Ch. 553, L. 1985; amd. Sec. 3, Ch. 72, L. 1987.

Cross-References

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-67-310. Qualifications of applicant for registration as land surveyor-in-training. One of the following shall be considered as minimum evidence to the board that the applicant is qualified for registration as a land surveyor-in-training:

(1) have a bachelor of science degree in a board-approved curriculum that must contain a minimum of 40 quarter credit hours in surveying techniques, principles, and practices, and have passed the written examinations required by the board;

(2) have at least 2 years of formal education in an approved curriculum that must contain a minimum of 40 quarter credit hours in surveying techniques, principles, and practices, above high school level with at least 90 quarter credit hours or equivalent semester hours passed, or the equivalent approved by the board, and have passed the written examinations required by the board;

(3) have a bachelor of science degree in a board-approved curriculum and present evidence satisfactory to the board that, in addition thereto, he has had at least 2 years of combined office and field experience in land surveying, with a minimum of 1 year in charge of land surveying projects under the supervision of a professional land surveyor, and have passed the written examinations required by the board; or

(4) present evidence satisfactory to the board that he has had at least 6 years of combined office and field experience in land surveying, with a minimum of 4 years of experience in charge of land surveying projects in Montana, under the supervision of a professional land surveyor, and has passed the examinations required by the board.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(2)(b); amd. Sec. 3, Ch. 354, L. 1983; amd. Sec. 10, Ch. 553, L. 1985; amd. Sec. 4, Ch. 72, L. 1987.

Cross-References

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-67-311. Examinations. Examination requirements are as follows:

(1) The examinations shall be held at times and places as the board directs. The board shall determine the acceptable grade on examinations.

(2) Written examinations may be taken only after the applicant has met the other minimum requirements as given in 37-67-305 through 37-67-310 and has been approved by the board for admission to the examinations as follows:

(a) The examination on engineering fundamentals consists of an 8-hour examination on the fundamentals of engineering. Passing the examination qualifies the examinee for an engineer-in-training certificate provided he has met all other requirements for certification required by this chapter.

(b) The examination on principles and practice of engineering consists of an 8-hour examination on applied engineering. Passing this examination qualifies the examinee for registration as a professional engineer provided he has met the other requirements for registration required by this chapter.

(c) The examinations for land surveyor-in-training consist of two 4-hour examinations, designated as parts I and II, on the basic disciplines of land surveying. Passing these examinations qualifies the examinee for a land surveyor-in-training certificate provided he has met all other requirements for certificates required by this chapter.

(d) The requirements and examinations for professional land surveyor consist of being a land surveyor-in-training and of two 4-hour examinations, designated as parts III and IV, on the applied disciplines of land surveying. Passing these examinations qualifies the examinee for registration as a professional land surveyor provided he has met the other requirements for registration required by this chapter.

(3) A candidate failing one examination may apply for reexamination, which may be granted upon payment of a fee established by the board. Before readmission to the examination in the event of a second failure, the examinee must appear before the board with evidence of having acquired the necessary additional knowledge to qualify.

History: En. 66-2359 by Sec. 7, Ch. 366, L. 1975; R.C.M. 1947, 66-2359; amd. Sec. 11, Ch. 553, L. 1985.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

37-67-312. Licensure of professional engineers without examination by comity or endorsement. (1) A person holding a certificate of registration to engage in the practice of engineering issued to him by a proper authority of a state, territory, or possession of the United States, the District of Columbia, or any foreign country, based on requirements that do not conflict with the provision of this chapter and were of a standard not lower than that specified in the applicable registration act in effect in this state at the time the certificate was issued, may upon application be registered without further examination.

(2) A person holding a certificate of qualification issued by the committee on national engineering certification of the national council of engineering examiners, whose qualifications meet the requirements of this chapter, may upon application be registered without further examination.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(1)(a)(i).

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-67-313. Comity consideration for land surveyors from other states. A person holding a certificate of registration to engage in the practice of land surveying issued by a proper authority of a state, territory, or possession of the United States or the District of Columbia, based on requirements that do not conflict with the provisions of this chapter and were of a standard not lower than that specified in the applicable registration act in effect in this state at the time the certificate was issued, will be given comity consideration. However, he may be asked to meet the conditions for taking and take such examinations as the board deems necessary to determine his qualifications; but in any event, he shall be required to pass a written examination of not less than 8-hours' duration, which shall include questions on laws, procedures, and practices pertaining to the practice of land surveying in this state.

History: **En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(2)(a)(iii); amd. Sec. 12, Ch. 553, L. 1985.**

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-67-314. Issuance of certificates — seal of professional engineer or professional land surveyor — enrollment card for trainees. (1) The department shall issue to any applicant who, in the opinion of the board, has met the requirements of this chapter a certificate of registration giving the registrant proper authority to practice his profession and to assume responsible charge of engineering or land surveying projects in this state. The certificate of registration for a professional engineer shall carry the designation "professional engineer" and for a professional land surveyor, "professional land surveyor". It shall give the full name of the registrant with his serial number and shall be signed by the chairman and the secretary under the seal of the board.

(2) This certificate shall be prima facie evidence that the person named thereon is entitled to all rights, privileges, and responsibilities of a professional engineer or professional land surveyor while the certificate of registration remains unrevoked or unexpired.

(3) Each registrant hereunder may, upon registration, obtain a seal of a design authorized by the board, bearing the registrant's name, serial number, and the legend "professional engineer" and/or "professional land surveyor". Plans, specifications, plats, drawings, reports, design information, and calculations prepared by a registrant must when issued be signed with a written signature, dated, and stamped with the seal or a seal facsimile. It is unlawful for a registrant to affix or permit his seal and signature or seal facsimile to be affixed to any plans, specifications, plats, drawings, reports, design information, or calculations after the expiration of a certificate or for projects for which the registrant was not in responsible charge.

(4) The department shall issue to any applicant who, in the opinion of the board, has met the requirements of this chapter an enrollment card as engineer-in-training or land surveyor-in-training which indicates that his name has been recorded as such in the board office. The engineer-in-training or land surveyor-in-training enrollment card does not authorize the holder to practice as a professional engineer or professional land surveyor.

History: **En. 66-2360 by Sec. 8, Ch. 366, L. 1975; R.C.M. 1947, 66-2360; amd. Sec. 13, Ch. 553, L. 1985.**

Cross-References

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

37-67-315. Biennial renewal — fee — statement of competency. (1) Certificates of registration expire every second year on the date established by rule of the department and become invalid on that date unless renewed. The department shall notify every person registered under this chapter of the date of the expiration of his certificate and the amount of the fee required for its renewal for 2 years. This notice shall be mailed at least 1 month in advance of the date of the expiration of the certificate. Renewal may be made prior to the expiration date by the payment of a fee as set by the board for either a professional engineer or professional land surveyor. For renewal of a dual license as both a professional engineer and professional land surveyor, the fee shall be set by the board.

(2) No certificate may be renewed unless the registrant submits a statement to the effect and the board is satisfied that he has maintained competency by:

(a) the continued practice of engineering or land surveying; or

(b) engaging in other activities that provide for the maintenance of competency as prescribed by board rule.

(3) Failure on the part of a registrant to renew his certificate biennially prior to the expiration date does not deprive him of the right of renewal; however, a registrant who fails to pay the renewal fee for an additional year of the biennium shall be considered a new applicant and is required to submit a new application.

(4) The fee for any registrant who fails to renew his certificate prior to the expiration date shall be increased by an amount not to exceed 50% of his renewal fee. Renewal may not be completed until all fees are paid.

History: En. Sec. 17, Ch. 150, L. 1957; Sec. 66-2340, R.C.M. 1947; amd. Sec. 7, Ch. 282, L. 1969; amd. Sec. 222, Ch. 350, L. 1974; amd. Sec. 8, Ch. 215, L. 1975; redes. 66-2361 by Sec. 9, Ch. 366, L. 1975; R.C.M. 1947, 66-2361; amd. Sec. 6, Ch. 408, L. 1979; amd. Sec. 67, Ch. 345, L. 1981; amd. Sec. 3, Ch. 489, L. 1981; amd. Sec. 8, Ch. 390, L. 1983; amd. Sec. 14, Ch. 553, L. 1985.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-67-316. Replacement of lost or destroyed certificate. A new certificate of registration to replace a certificate revoked, lost, destroyed, or mutilated may be issued by the department, subject to the rules of the board.

History: En. 66-2365 by Sec. 13, Ch. 366, L. 1975; R.C.M. 1947, 66-2365(part).

37-67-317. Deposit of moneys collected. The department shall collect all moneys under this chapter and shall deposit these moneys in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 10, Ch. 150, L. 1957; Sec. 66-2333, R.C.M. 1947; amd. Sec. 123, Ch. 147, L. 1963; amd. Sec. 28, Ch. 177, L. 1965; amd. Sec. 216, Ch. 350, L. 1974; redes. 66-2354 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2354; amd. Sec. 1, Ch. 277, L. 1983.

37-67-318. Roster of licensees to be published by department. A roster showing the names and addresses of registered professional engineers and registered professional land surveyors shall be published by the department. Copies shall be placed on file with the secretary of state, the clerk of each incorporated city and town, and in the office of each county clerk and recorder within the state and furnished to each person registered and to the public, on request, at a fee established by the board.

History: En. Sec. 12, Ch. 150, L. 1957; Sec. 66-2335, R.C.M. 1947; amd. Sec. 218, Ch. 350, L. 1974; amd. and redes. 66-2356 by Sec. 4, Ch. 366, L. 1975; amd. Sec. 2, Ch. 317, L. 1977; R.C.M. 1947, 66-2356; amd. Sec. 7, Ch. 408, L. 1979; amd. Sec. 15, Ch. 553, L. 1985.

Cross-References

Public records generally, Title 2, ch. 6, part 1.

Prohibition on distribution or sale of mailing lists, 2-6-109.

37-67-319. Temporary permits for nonresident practitioners. Temporary permits are governed by the following:

(1) Such a permit may be granted for the practice or offer to practice engineering by a person not a resident of or having no established place of business in this state, provided such person is legally qualified by registration to practice engineering in his own state or country, provided the requirements for registration in his home state or country are not less than those defined in this chapter. Such person shall make application to the board in writing. The application must be accompanied by a fee set by the board. Upon approval by the board, such person may be granted a written permit for a definite period of time not to exceed 1 year to do a specific job; provided, however, no right to practice engineering shall accrue to such applicant with respect to any other works not set forth in the permit.

(2) The practice of land surveying under a temporary permit by a person registered as a professional land surveyor in another state is not considered to be in the best interests of the public and, therefore, may not be granted.

History: **En. 66-2368 by Sec. 16, Ch. 366, L. 1975; R.C.M. 1947, 66-2368; amd. Sec. 26, Ch. 22, L. 1979; amd. Sec. 16, Ch. 553, L. 1985.**

Cross-References

Rules for determining residency, 1-1-215.

37-67-320. Practice by partnerships and corporations. (1) The practice of or offer to practice engineering or land surveying by registered professional engineers or registered professional land surveyors organized as a partnership or incorporated as a professional corporation under the provisions of the professional corporations law of this state or under the provisions of a similar law of any other state is permitted in this state if all the partners of the partnership or each officer and shareholder of the professional corporation are registered under or exempt from this chapter.

(2) The practice of or offer to practice engineering or land surveying by a partnership other than one provided for in subsection (1) or by a corporation, other than a professional corporation, is permitted in this state if:

(a) all officers, employees, and agents of a partnership or corporation who will perform the practice of engineering or land surveying within this state for the partnership or corporation are registered under this chapter;

(b) each person in responsible charge of the activities of a partnership or corporation, which activities constitute the practice of engineering or land surveying, is a professional engineer or professional land surveyor registered in this state or a person authorized to practice engineering or land surveying as provided in this chapter;

(c) the partnership or corporation has been issued a certificate of authorization by the board as provided in subsection (3);

(d) the partnership or corporation is jointly and severally responsible with and for the conduct or acts of its agents, employees, or officers concerning any professional engineering or land surveying services performed or to be executed in this state; an individual practicing engineering or land surveying is not relieved of the responsibility for his conduct or acts performed by reason of his employment by or relationship with the partnership or corporation; and

(e) all final drawings, specifications, plans, reports, or other engineering or land surveying papers or documents involving the practice of engineering or land surveying, when issued, are dated and bear the seals and signatures of the professional engineers or professional land surveyors registered under this chapter by whom or under whose responsible charge they were prepared.

(3) A partnership or corporation desiring a certificate of authorization or the renewal thereof shall file a written application with the board listing the names and addresses of all partners of the partnership or officers and directors of the corporation and the names and addresses of all employees who are registered to practice engineering or land surveying in this state and who are or will be in responsible charge of any engineering or land surveying in this state by the partnership or corporation, together with any other information the board requires. Upon the receipt of an application and of a fee in an amount established by the board for the initial certificate or biennial renewal thereof, the board shall issue to the partnership or corporation a certificate of authorization or a renewal thereof, which certificate of authorization may not be transferred. If the board finds an error in an application or that facts exist which would entitle the board to suspend or revoke a certificate if issued to the applicant, the board shall deny the application. If a change occurs in the information submitted on the application of a partnership or corporation within the term of the authorization, the partnership or corporation shall file with the board a written report listing the change within 30 days after the change occurs. The provisions of this chapter concerning issuance, expiration, renewal, and reissuance of certificates of registration of individuals, except for 37-67-315(2), apply to certificates of authorization issued to partnerships and corporations under this subsection. Partnerships or corporations are subject to disciplinary proceedings and penalties and the board may reprimand them or revoke, suspend, or refuse to renew their certificates of authorization for cause in the same manner and to the same extent as provided in 37-67-331. "Registrant" and "certificate of registration" in 37-67-331 include any partnership or corporation holding a certificate of authorization issued under this subsection and to such certificate of authorization.

History: En. Sec. 5, Ch. 553, L. 1985.

37-67-321. Emeritus status. (1) A registrant who has terminated his practice of engineering or land surveying may apply to the board for emeritus status.

(2) Upon receiving an application for emeritus status accompanied by the fee established by the board, the board shall issue a certificate of emeritus status to the applicant and record the applicant's name in the roster as an emeritus registrant, along with the date he received emeritus status.

(3) An emeritus registrant may retain but may not use his seal and may not practice engineering or land surveying.

(4) The board shall reissue a certificate of registration to an emeritus registrant who pays all application fees, meets all current requirements for registration, and demonstrates to the board's satisfaction that for the 2 years

preceding his application for registration he has met the requirements for maintaining professional competence established under 37-67-315.

History: En. Sec. 19, Ch. 553, L. 1985.

37-67-322 through 37-67-330 reserved.

37-67-331. Revocation, suspension, or refusal to renew certificate — grounds — procedure — reinstatement. (1) The board may reprimand or revoke, suspend, or refuse to renew the certificate of a registrant found guilty of:

(a) fraud or deceit in obtaining a certificate of registration;

(b) gross negligence, incompetency, or misconduct in the practice of engineering or land surveying as a registered professional engineer or professional land surveyor;

(c) a felony;

(d) violation of rules for professional conduct for professional engineers and professional land surveyors adopted by the board;

(e) if a professional land surveyor, failure to comply with the Corner Recordation Act.

(2) Any person may make charges of fraud, deceit, gross negligence, incompetency, or misconduct against a registrant. The charges shall be made by affidavit and subscribed and sworn to by the person making them and filed with the department. The charges shall be investigated by the board and, unless the board dismisses the charges after investigation as unfounded or trivial, it shall act on the charges within 6 months after the date on which the charges were made. The board is considered to have acted on the charges if it has given notice by mail to the licensee of its intent to revoke, suspend, or refuse to renew his license and the notice contains the facts or conduct which warrant the intended action. For purposes of investigation under this section, the board may require that a registrant meet with it.

(3) The board may require a registrant to take a written or oral examination, or both, in a proceeding to reprimand or revoke, suspend, or refuse to renew.

(4) If, after hearing, five or more members of the board vote in favor of sustaining the charges, the board shall reprimand, suspend, refuse to renew, or revoke the certificate of registration of the registered professional engineer or professional land surveyor.

(5) The board, for reasons it considers sufficient, may reissue a certificate of registration to a person whose certificate has been revoked if five or more members of the board vote in favor of the reissuance.

History: En. 66-2365 by Sec. 13, Ch. 366, L. 1975; R.C.M. 1947, 66-2365(part); amd. Sec. 8, Ch. 408, L. 1979; amd. Sec. 17, Ch. 553, L. 1985.

Cross-References

Oath defined, 1-1-201.

Power of notary to take acknowledgments, 1-5-416.

Oaths, Title 1, ch. 6.

Licensing to follow contested case procedure, 2-4-631.

Affidavits, Title 26, ch. 1, part 10.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of Director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Perjury, 45-7-201.

False swearing, 45-7-202.

Corner Recordation Act of Montana, Title 70, ch. 22, part 1.

37-67-332. Violations — penalties — enforcement. (1) A person who practices or offers to practice engineering or land surveying in this state without being registered under this chapter or a person presenting or attempting to use as his own the certificate of registration or the seal of another or a person who gives false or forged evidence to the board or department in obtaining a certificate of registration or a person who falsely impersonates another registrant or a person who attempts to use an expired, revoked, or emeritus certificate of registration or a person who violates this chapter is guilty of a misdemeanor and shall on conviction be fined not less than $100 or more than $500 or imprisoned for a period not exceeding 3 months, or both.

(2) All officers of the law of this state or a political subdivision thereof shall enforce this chapter and prosecute persons violating it. The attorney general shall act as legal adviser of the board and render legal assistance necessary in carrying out this chapter.

History: En. Sec. 23, Ch. 150, L. 1957; Sec. 66-2346, R.C.M. 1947; amd. Sec. 225, Ch. 350, L. 1974; redes. 66-2366 by Sec. 14, Ch. 366, L. 1975; R.C.M. 1947, 66-2366; amd. Sec. 18, Ch. 553, L. 1985.

Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Forgery, 45-6-325.

CHAPTER 68

ELECTRICIANS AND ELECTRICAL SAFETY

Part 1 — General

37-68-101. Purpose.
37-68-102. Definitions.
37-68-103. Exemptions.

Part 2 — State Electrical Board

37-68-201. Organization — meetings — quorum — rulemaking power — seal.
37-68-202. Compensation and expenses of board members.

Part 3 — Licensing

37-68-301. License required to engage in electrical work.
37-68-302. Unauthorized use of title.
37-68-303. Apprentice may work under licensed electrician — record of apprentices.
37-68-304. Master electricians — application — qualifications — contents of examination.
37-68-305. Journeyman and residential electricians — application — qualifications — contents of examination.
37-68-306. Temporary permits pending examination.
37-68-307. Examination procedure — issuance of master, journeyman, or residential electrician's license — expiration.
37-68-308. Licensure without examination of persons licensed locally.
37-68-309. Electricians licensed by other states — reciprocity.
37-68-310. License renewal every three years.

37-68-311. Examination fee — license fee — specific exemption for apprentices.
37-68-312. Electrical contractor's license — application — issuance — fees — renewal.
37-68-313. Reasonable fees — deposit of money collected.
37-68-314. Qualifications for licensing examination — when no discretion in board.
37-68-315 through 37-68-320 reserved.
37-68-321. Suspension or revocation of license.
37-68-322. Penalty.

Chapter Cross-References
Construction contracts, Title 18, ch. 2.
Building construction standards, Title 50, ch. 60.

Part 1
General

37-68-101. Purpose. The purpose of this chapter is to:

(1) protect the health and safety of the people of this state from the danger of electrically caused shocks, fires, and explosions;

(2) protect property from the hazard of electrically caused fires and explosions;

(3) establish a procedure for determining where and by whom electrical installations are to be made;

(4) assure the public that persons making electrical installations are qualified; and

(5) insure that the electrical installations and electrical products made and sold in this state meet minimum safety standards.

History: En. Sec. 2, Ch. 148, L. 1965; amd. Sec. 19, Ch. 366, L. 1969; amd. Sec. 1, Ch. 425, L. 1973; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 269, Ch. 350, L. 1974; amd. Sec. 8, Ch. 504, L. 1977; R.C.M. 1947, 66-2802(part).

37-68-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the state electrical board provided for in 2-15-1874.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Electrical contractor" means a person, firm, partnership, corporation, association, or combination of these who undertakes or offers to undertake for another the planning, laying out, supervising, and installing or the making of additions, alterations, and repairs in the installation of wiring apparatus and equipment for electric light, heat, and power. A registered electrical engineer who plans or designs electrical installations is not an electrical contractor.

(4) "Journeyman electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to wire for, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes under the rules governing this work.

(5) "Master electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to properly plan, lay out, and supervise the installation and repair of wiring apparatus and equipment for electric light, heat, power, and other purposes under the rules governing this work.

(6) "Residential electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to wire for, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes in residential construction consisting of less than five living units in a single structure under the rules governing this work.

History: En. Sec. 3, Ch. 148, L. 1965; amd. Sec. 270, Ch. 350, L. 1974; R.C.M. 1947, 66-2803; amd. Sec. 4, Ch. 546, L. 1979; amd. Sec. 3, Ch. 274, L. 1981.

37-68-103. Exemptions. (1) Nothing in this chapter shall be deemed to apply to the installation, alteration, or repair of electrical signal or communications equipment owned or operated by a public utility or a city. For purposes of this exemption, "communications equipment" includes telephone wire inside a customer's premises. Nothing in this chapter prohibits a public utility from doing inside wiring to install, alter, repair, or maintain electrical equipment, installations, or facilities in buildings owned by the public utility if the work is accomplished by an employee who is a licensed electrician. If the building owned by the public utility is open to the public and the inside wiring constitutes major renovation or construction, the installation, alteration, repair, or maintenance of electrical equipment, installations, or facilities is subject to permits and inspections required by law.

(2) The licensing or inspection provisions of this chapter do not apply to regularly employed maintenance electricians doing maintenance work on the business premises of their employer, nor do they apply to line work on the business premises of the employer when ordinary and customary in-plant or onsite installations, modifications, additions, or repairs are performed.

(3) Nothing in this chapter shall be construed to require an individual to hold a license while or for doing electrical work on his own property or residence provided that said property or residence is maintained for his own use.

(4) An individual, firm, partnership, or corporation may engage in business as an electrical contractor without an electrician's license if all electrical work performed by such individual, firm, partnership, or corporation is under the direction, control, and supervision of a licensed master electrician or under the direction, control, and supervision of a journeyman electrician for residential construction consisting of less than five living units in a single structure.

(5) Any person who plugs in an electrical appliance where an approved electrical outlet is already installed shall not be considered as an installer.

(6) No provisions of this chapter shall in any manner interfere with, hamper, preclude, or prohibit any vendor of any electrical appliance from selling, delivering, and connecting any electrical appliance if the connection does not necessitate the installation of electrical wiring of the structure where the appliance is to be connected.

History: En. Sec. 12, Ch. 148, L. 1965; amd. Sec. 1, Ch. 423, L. 1973; amd. Sec. 1, Ch. 269, L. 1975; R.C.M. 1947, 66-2812; amd. Sec. 5, Ch. 546, L. 1979; amd. Sec. 1, Ch. 245, L. 1987.

Cross-References

Exceptions to electrical installation requirements, 50-60-602.

Part 2

State Electrical Board

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1874.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-68-201. Organization — meetings — quorum — rulemaking power — seal. (1) Each July the board shall elect from its membership a president, vice-president, and secretary-treasurer.

(2) The board shall meet quarterly and at such other times it considers necessary.

(3) A majority of the members of the board shall constitute a quorum for transaction of business.

(4) The board may:

(a) adopt rules for the administration of this chapter, for the licensing of electrical contractors, for continuing education, and for the examination and licensing of master and journeymen electricians;

(b) adopt a seal;

(c) cause the prosecution and enjoinder of persons violating this chapter.

History: (1), (2), (4)En. Sec. 5, Ch. 148, L. 1965; amd. Sec. 272, Ch. 350, L. 1974; amd. Sec. 11, Ch. 453, L. 1977; Sec. 66-2805, R.C.M. 1947; (3)En. Sec. 4, Ch. 148, L. 1965; amd. Sec. 1, Ch. 374, L. 1973; Sec. 66-2804, R.C.M. 1947; amd. and redes. 82A-1602.10 by Sec. 271, Ch. 350, L. 1974; amd. Sec. 58, Ch. 439, L. 1975; Sec. 82A-1602.10, R.C.M. 1947; R.C.M. 1947, 66-2805(1), (2)(a) thru (2)(c), 82A-1602.10(5); amd. Sec. 4, Ch. 245, L. 1987.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Duty of Department to provide facilities, 37-1-101.

Disrupting meeting as disorderly conduct, 45-8-101.

37-68-202. Compensation and expenses of board members. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: Ap. p. Sec. 4, Ch. 148, L. 1965; amd. Sec. 1, Ch. 374, L. 1973; Sec. 66-2804, R.C.M. 1947; amd. and redes. 82A-1602.10 by Sec. 271, Ch. 350, L. 1974; amd. Sec. 58, Ch. 439, L. 1975; Sec. 82A-1602.10, R.C.M. 1947; Ap. p. Sec. 5, Ch. 148, L. 1965; amd. Sec. 272, Ch. 350, L. 1974; amd. Sec. 11, Ch. 453, L. 1977; Sec. 66-2805, R.C.M. 1947; R.C.M. 1947, 66-2805(3), 82A-1602.10(4); amd. Sec. 33, Ch. 474, L. 1981.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-68-301. License required to engage in electrical work. (1) A person may not engage in or work at the business, trade, or calling of electrical contractor, residential electrician, journeyman electrician, or master electrician in this state until the person has received from the department a license or permit to work as an electrical contractor, residential electrician, journeyman electrician, or master electrician.

(2) A private or public employment agency or labor union, or an employee thereof, who refers persons for employment by others may not refer a person for employment by others to perform the work of an electrical contractor, residential electrician, journeyman electrician, or master electrician in this state unless the person has received from the department a license or permit to work as an electrical contractor, residential electrician, journeyman electrician, or master electrician.

History: En. Sec. 6, Ch. 148, L. 1965; amd. Sec. 274, Ch. 350, L. 1974; R.C.M. 1947, 66-2806; amd. Sec. 6, Ch. 546, L. 1979; amd. Sec. 1, Ch. 31, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 31 inserted (2) requiring a license or permit of a person wishing to perform electrical work prior to referral for employment by an employment agency or labor union; and made minor changes in style.

Cross-References

Installation of new security alarm systems by electrician, 37-60-409.

37-68-302. Unauthorized use of title. No person, firm, partnership, corporation, or association shall assume or use the title or designation of licensed master electrician, licensed journeyman electrician, or residential electrician unless qualified and licensed under this chapter.

History: En. Sec. 8, Ch. 148, L. 1965; R.C.M. 1947, 66-2808; amd. Sec. 7, Ch. 546, L. 1979.

37-68-303. Apprentice may work under licensed electrician — record of apprentices. This chapter does not prohibit a person from working as an apprentice in the trade of electrician with an electrician licensed under this chapter and under rules made by the board. The name and residence of each apprentice and the name and residence of his employer shall be filed with the department, and a record shall be kept by the department showing the name and residence of each apprentice.

History: En. Sec. 17, Ch. 148, L. 1965; amd. Sec. 281, Ch. 350, L. 1974; R.C.M. 1947, 66-2817.

Cross-References

Apprenticeship, Title 39, ch. 6, part 1.

37-68-304. Master electricians — application — qualifications — contents of examination. (1) An applicant for a master electrician's license shall furnish written evidence that he is a graduate electrical engineer of an accredited college or university and has 1 year of practical electrical experience or that he is a graduate of an electrical trade school and has at least 4 years of practical experience in electrical work or that he has had at least 5 years' practical experience in planning, laying out, or supervising the installation and repair of wiring, apparatus, or equipment for electrical light, heat, and power.

(2) Applicants for license as a master electrician shall file an application on forms prescribed by the board and furnished by the department, together with the examination fee. The board shall, not less than 30 days prior to a

scheduled written examination, notify each applicant that the evidence submitted with his application is sufficient to qualify him to take the written examination or that the evidence is insufficient and is rejected. If the application is rejected, the board shall set forth the reasons in the notice to the applicant and shall authorize the department to return the applicant's examination fee. The place of examinations shall be designated by the board, and examinations shall be held at least once a year and at other times as, in the opinion of the board, the number of applicants warrants.

(3) The written examination shall consist of at least 30 questions designed to fairly test the applicant's knowledge and his technical application in the following subjects:

(a) the national electrical code;

(b) cost estimating for electrical installments;

(c) procurement and handling of materials needed for electrical installations and repair;

(d) reading of blueprints for electrical work;

(e) drafting and layout of electrical circuits;

(f) knowledge of practical electrical theory.

History: **En. Sec. 7, Ch. 148, L. 1965; amd. Sec. 275, Ch. 350, L. 1974; R.C.M. 1947, 66-2807(1); amd. Sec. 2, Ch. 245, L. 1987.**

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-68-305. Journeyman and residential electricians — application — qualifications — contents of examination. (1) An applicant for a journeyman electrician's license shall furnish written evidence that he has had at least 4 years' apprenticeship in the electrical trade or 4 years' practical experience in the wiring for, installing, and repairing of electrical apparatus and equipment for light, heat, and power. Applications for license and notice to the applicant shall be made and given as in the case of master electricians' licenses. The written examination for a journeyman's license shall consist of at least 30 questions designed to fairly test the applicant's knowledge and the technical application thereof in the following subjects:

(a) the Ohm's law;

(b) the national electrical code;

(c) layout and practical installation of electrical circuits.

(2) An applicant for a residential electrician's license shall furnish written evidence that he has had at least 2 years' apprenticeship in the electrical trade or 2 years' practical experience in the wiring for, installing, and repairing of electrical apparatus and equipment for light, heat, and power in residential construction consisting of less than five living units in a single structure. Application for license and notice to the applicant is made and given as in the case of master electricians' licenses. The written examination for a residential electrician's license consists of at least 30 questions designed to fairly test the applicant's knowledge and the technical application thereof in the following subjects:

(a) the Ohm's law;

(b) the national electrical code;

(c) layout and practical installation of electrical circuits in residential construction consisting of less than five living units in a single structure.

History: En. Sec. 7, Ch. 148, L. 1965; amd. Sec. 275, Ch. 350, L. 1974; R.C.M. 1947, 66-2807(2); amd. Sec. 8, Ch. 546, L. 1979.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Apprenticeship, Title 39, ch. 6, part 1.

37-68-306. Temporary permits pending examination. The board may authorize the department to issue a temporary permit to engage in the work of a master electrician, journeyman electrician, or residential electrician to an applicant who furnishes evidence satisfactory to the board that he has the required experience to qualify for the examination and who pays the fee. A temporary permit continues in effect only until the next examination is given and may be revoked by the board at any time. If the applicant is granted a license, a fee paid for the temporary permit shall be applied to the fee required for a license.

History: En. Sec. 10, Ch. 148, L. 1965; amd. Sec. 277, Ch. 350, L. 1974; R.C.M. 1947, 66-2810; amd. Sec. 9, Ch. 546, L. 1979.

37-68-307. Examination procedure — issuance of master, journeyman, or residential electrician's license — expiration. (1) To ensure impartiality, the examination for either the master's or journeyman's license must be by numbers drawn by lot. A paper may not be marked with the name of an applicant, but must be anonymously graded by the department. The examination passing grade is 75%.

(2) If it is determined that the applicant has passed the examination, the department, on payment by the applicant of the fee, shall issue to the applicant a license that authorizes the licensee to engage in the business, trade, or calling of a residential electrician, journeyman electrician, or master electrician.

(3) Each original license expires on a July 15 that is not more than 3 years subsequent to the date of issuance, at the discretion of the board.

History: En. Sec. 7, Ch. 148, L. 1965; amd. Sec. 275, Ch. 350, L. 1974; R.C.M. 1947, 66-2807(3); amd. Sec. 10, Ch. 546, L. 1979; amd. Sec. 2, Ch. 31, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 31 in (3), after "is", substituted "not more than 3 years" for "at least 1 year but not more than 2 years" and after "issuance" inserted "at the discretion of the board"; and made minor changes in style.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

37-68-308. Licensure without examination of persons licensed locally. The board may authorize the department to issue a license as a master electrician, journeyman electrician, or residential electrician to an applicant without written examination on satisfactory proof that the applicant has the qualifications to apply for a license under this chapter and is the holder of a valid license issued by a city or other political subdivision of this state which provides for the examination and licensing of electricians.

History: En. Sec. 11, Ch. 148, L. 1965; amd. Sec. 278, Ch. 350, L. 1974; R.C.M. 1947, 66-2811; amd. Sec. 11, Ch. 546, L. 1979.

37-68-309. Electricians licensed by other states — reciprocity. To the extent that other states which provide for the licensing of electricians provide for similar action, the board may grant licenses to electricians licensed by other states on payment by the applicant of the required fee and on furnishing proof to the board that the applicant has qualifications at least equal to those provided herein for applicants for written examinations. Applicants who qualify for a license under this section are not required to take a written examination.

History: En. Sec. 9, Ch. 148, L. 1965; amd. Sec. 276, Ch. 350, L. 1974; R.C.M. 1947, 66-2809.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-68-310. License renewal every three years. Licenses of residential electricians, journeyman electricians, or master electricians, unless they have been suspended or revoked by the board, must be renewed for a period of 3 years by the department on application for renewal made to the department prior to July 15 of the year in which the prior license expired and on the payment of a renewal fee. If application for renewal is not made prior to July 15, an additional fee prescribed by the board must be paid because of the delinquency in renewal. All applications for renewal must be made prior to August 15 of the year in which the prior license expired, otherwise the license is forfeited and the applicant is required to pass the examination and pay the fees required of applicants for original licenses.

History: En. Sec. 7, Ch. 148, L. 1965; amd. Sec. 275, Ch. 350, L. 1974; R.C.M. 1947, 66-2807(4); amd. Sec. 12, Ch. 546, L. 1979; amd. Sec. 68, Ch. 345, L. 1981; amd. Sec. 3, Ch. 31, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 31 near middle of first sentence substituted "3 years" for "1 year" and at end deleted reference to annual renewal fee and in third sentence, after "year", inserted "in which the prior license expired"; and made minor changes in style.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-68-311. Examination fee — license fee — specific exemption for apprentices. (1) Master electricians and journeyman or residential electricians installing or intending to install for hire electric wiring or equipment to convey electric current or apparatus to be operated by this current shall make application for a license to the department. The application must be on a form furnished by the department and must be accompanied by an examination fee set by the board. The forms must state the applicant's full name and address, the extent of work experience, and other information required by the board. If the applicant has complied with the rules adopted by the board and, being qualified, has successfully completed the examination, the applicant shall pay to the department a license fee set by the board for a master electrician's license or for a journeyman or a residential electrician's license, and upon receipt of the fee the department shall issue the proper license to the applicant.

(2) A person serving a 4-year electrician apprenticeship under the supervision of a licensed electrician is exempt from the licensing provision of this

section during training. Credit for the time spent in an electrical school must be given to the master electrician, journeyman electrician, residential electrician, or apprentice, up to a total of 2 years, on the 4-year requirement.

History: En. Sec. 15, Ch. 148, L. 1965; amd. Sec. 280, Ch. 350, L. 1974; R.C.M. 1947, 66-2815; amd. Sec. 13, Ch. 546, L. 1979; amd. Sec. 4, Ch. 31, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 31 in (1), at beginning of first sentence after "Master electricians", deleted "who are not electrical contractors" and in fourth sentence deleted reference to annual license fee; and made minor changes in style.

37-68-312. Electrical contractor's license — application — issuance — fees — renewal. Each electrical contractor shall, before July 1 of the year in which the prior license expired, file with the department an application in writing for each firm operated by the electrical contractor in this state to obtain a license. A license may not be issued until the applicant meets the requirements and has paid to the department a license fee set by the board for each firm operated by the electrical contractor. Licenses must bear the date of issue. Each original license expires on the July 1 that is subsequent to the date of issuance, as determined by the board. An electrical contractor licensed under this chapter is entitled to have a license renewed for the ensuing 3-year period by payment to the department of the license fee before the date of expiration of the license and by meeting the requirements set by the board.

History: En. Sec. 14, Ch. 148, L. 1965; amd. Sec. 279, Ch. 350, L. 1974; R.C.M. 1947, 66-2814; amd. Sec. 14, Ch. 546, L. 1979; amd. Sec. 5, Ch. 31, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 31 in first sentence substituted "the year in which the prior license expired" for "each year", at beginning of fourth sentence inserted reference to each original license and after "July 1" substituted "that is subsequent to the date of issuance, as determined by the board" for "following the date of issue", and in fifth sentence, near middle, substituted "3-year period" for "year" and at end, after "license", inserted "and by meeting the requirements set by the board"; and made minor changes in style.

37-68-313. Reasonable fees — deposit of money collected. All fees established by the board under this chapter must be reasonably related to the respective program costs. Money collected by the department under this chapter shall be deposited in the state special revenue fund for the use of the board.

History: En. Sec. 19, Ch. 148, L. 1965; amd. Sec. 282, Ch. 350, L. 1974; R.C.M. 1947, 66-2819; amd. Sec. 15, Ch. 546, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-68-314. Qualifications for licensing examination — when no discretion in board. A person applying for a license as a journeyman electrician or a residential electrician must be allowed by the state electrical board to take the required examination and be granted a license upon passing the examination if:

(1) he has completed an appropriate training program conducted by a bona fide union;

(2) he has completed the appropriate required apprenticeship; or

(3) he has worked in the electrical field for 10 years and is considered by his employer, as shown by a written statement of the employer, to be capable and qualified to take the examination for the license for which he is applying.

History: En. Sec. 1, Ch. 332, L. 1981; amd. Sec. 3, Ch. 245, L. 1987.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

Apprenticeship, Title 39, ch. 6, part 1.

37-68-315 through 37-68-320 reserved.

37-68-321. Suspension or revocation of license. The board may suspend or revoke a license granted under this chapter for any of the following reasons:

(1) violation of this chapter, the national electrical code, or the rules of the board;

(2) any cause for which issuance of the license could have been denied had it existed and been known to the board;

(3) commission of any act of gross negligence, incompetency, or misconduct as may be determined by the board in the practice of a master, journeyman, or residential electrician or the business of an electrical contractor; or

(4) making a material misstatement, misrepresentation, or fraud in obtaining a license.

History: En. Sec. 5, Ch. 148, L. 1965; amd. Sec. 272, Ch. 350, L. 1974; amd. Sec. 11, Ch. 453, L. 1977; R.C.M. 1947, 66-2805(2)(d); amd. Sec. 16, Ch. 546, L. 1979.

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting of disciplinary actions against licensees, 37-1-105.

Duties of Director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-68-322. Penalty. (1) Any person or corporation violating any provision of this chapter shall upon conviction of a violation:

(a) if a person, be punished by a fine not more than $500, by imprisonment for a term not to exceed 6 months, by revocation of the license, or by any combination of the fine, imprisonment, and revocation, in the discretion of the court; and

(b) if a corporation, be punished by a fine of not more than $1,000.

(2) Any officer or agent of a corporation or member or agent of a partnership or association who personally participates in or is an accessory to any violation of this chapter by the partnership, association, or corporation shall be subject to the penalties prescribed for individuals.

(3) A violation of this chapter is a continuing violation, and the statute of limitations is tolled until the violation ceases. The county attorney shall, upon request of the board, prosecute any violation of the licensing requirements of this chapter.

History: En. Sec. 20, Ch. 148, L. 1965; R.C.M. 1947, 66-2820; amd. Sec. 6, Ch. 31, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 31 inserted (3) regarding violation of a licensing requirement as a continuing violation; and made minor changes in style.

Cross-References

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

CHAPTER 69

PLUMBERS

Part 1 — General

37-69-101. Definitions.
37-69-102. Exceptions.
37-69-103. No penalty for hiring unlicensed plumber.

Part 2 — Board of Plumbers

37-69-201. Chairman — quorum.
37-69-202. Rulemaking power — records.
37-69-203. Compensation of board members — expenses.

Part 3 — Licensing

37-69-301. License required — temporary exception by municipal resolution when licensed plumber not available.
37-69-302. Apprenticeship allowed.
37-69-303. Application — contents — requirements.
37-69-304. Qualifications of applicants for journeyman plumber's license — restriction on authority.
37-69-305. Qualifications of applicants for master plumber's license — restriction on authority.
37-69-306. Examination — issuance of license.
37-69-307. Examination fee and annual renewal fee.
37-69-308. Deposit of fees.
37-69-309. Plumbers licensed by other states — reciprocity.
37-69-310 through 37-69-319 reserved.
37-69-320. License discipline.
37-69-321. Repealed.
37-69-322. Revocation or suspension of license — procedure.
37-69-323. Restrictions on and responsibility for employees of master plumber.
37-69-324. Penalty.

Chapter Cross-References

Construction contracts, Title 18, ch. 2.

Building construction standards, Title 50, ch. 60.

Part 1

General

37-69-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of plumbers provided for in 2-15-1875.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Drainage system" means all the piping inside the walls of a building that conveys sewage or other liquid wastes outside the building to the building sewer but that does not extend more than 2 feet outside the building way.

(4) "Field of plumbing" means the business, trade, or work having to do with the installation, removal, alteration, or repair of plumbing and drainage systems or parts thereof.

(5) "Journeyman plumber" means a person who is authorized to make installation of all sanitary plumbing and potable water supply piping and appliances connected thereto.

(6) "Master plumber" means a person who is authorized by this chapter to plan, estimate, bid, contract for, and supervise plumbing work and who may do the work of a journeyman plumber.

(7) (a) Except as provided in subsection (7)(b), "plumbing system" means all potable water supply and distribution pipes, plumbing fixtures and traps, drainage and vent pipes, and building drains, including their respective joints and connections, devices, receptacles, and appurtenances within the property lines of any premises, up to 20 feet beyond the building foundation line, and includes potable water piping, water heaters, and vents for the premises.

(b) As defined in subsection (7)(a), "plumbing system" does not include water services installed and maintained by water districts or water user associations in which water service is installed by any qualified person appointed or hired by the administrative authority of the water system.

(8) "Public sewer system" means any common sewer carrying liquid wastes from two or more dwellings or any other facility that serves the public.

(9) "Public water supply" means any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that serves 10 or more families or 25 or more persons on a regular and continuous basis.

History: En. 66-2401.1 by Sec. 227, Ch. 350, L. 1974; amd. Sec. 2, Ch. 497, L. 1975; R.C.M. 1947, 66-2401.1; amd. Sec. 4, Ch. 549, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 661, L. 1985.

37-69-102. Exceptions. (1) Licensure is not required in the following instances of plumbing installation:

(a) where an owner of a single-family residence used exclusively for his personal use makes the installation himself for all sanitary plumbing and potable water supply piping or where a mobile home dealer makes such installation to existing facilities as part of delivering and setting up a mobile home for a purchaser;

(b) in any mine, mill, smelter, refinery, or railroad;

(c) in a farm or ranch not connected to public water supply and sewage disposal systems;

(d) in cities, towns, water districts, and water user associations extending their own water and sewer mains;

(e) installation of water conditioner services in private dwellings;

(f) minor work by employees or agents of an appliance dealer incidental to the installation of an appliance purchased from the dealer; and

(g) installation of a water meter by a qualified person appointed by the administrative authority of the water system.

(2) This chapter shall not be construed to apply to or to affect plumbing installations in any mines, mills, smelters, refineries, public utilities, railroads, or plumbing installations on farms or ranches not connected to public water supply or sewage disposal systems.

History: (1)En. Sec. 1, Ch. 203, L. 1949; amd. Sec. 1, Ch. 185, L. 1961; amd. Sec. 1, Ch. 497, L. 1975; Sec. 66-2401, R.C.M. 1947; (2)En. Sec. 15, Ch. 251, L. 1959; amd. Sec. 1, Ch. 44, L. 1973; amd. Sec. 12, Ch. 497, L. 1975; Sec. 66-2426, R.C.M. 1947; R.C.M. 1947, 66-2401(2), 66-2426; amd. Sec. 2, Ch. 661, L. 1985.

Cross-References

Exceptions to plumbing installation requirements, 50-60-503.

Exceptions to penalty for violation of plumbing installation requirements, 50-60-515.

37-69-103. No penalty for hiring unlicensed plumber. This chapter may not be construed as imposing any penalty on any unlicensed person for hiring or contracting with an unlicensed person to do work in the field of plumbing. However, any person who himself engages in the field of plumbing at a time when he is not duly licensed is subject to the penalties imposed by this chapter.

History: En. Sec. 4, Ch. 251, L. 1959; amd. Sec. 8, Ch. 497, L. 1975; R.C.M. 1947, 66-2415; amd. Sec. 27, Ch. 22, L. 1979.

Part 2
Board of Plumbers

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1875.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-69-201. Chairman — quorum. (1) The board shall annually select a chairman from its members.

(2) A majority of the board constitutes a quorum.

History: (1)En. Sec. 3, Ch. 251, L. 1959; amd. Sec. 235, Ch. 350, L. 1974; Sec. 66-2414, R.C.M. 1947; (2)En. Sec. 9, Ch. 203, L. 1949; amd. Sec. 234, Ch. 350, L. 1974; Sec. 66-2409, R.C.M. 1947; R.C.M. 1947, 66-2409(1), 66-2414(part).

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Duty of Department to provide facilities, 37-1-101.

Disrupting meeting as disorderly conduct, 45-8-101.

37-69-202. Rulemaking power — records. (1) The board may adopt rules necessary to carry out this chapter.

(2) The board shall adopt rules for the transaction of its business, and the department shall keep a record of the board's official actions.

History: (1)En. Sec. 9, Ch. 203, L. 1949; amd. Sec. 234, Ch. 350, L. 1974; Sec. 66-2409, R.C.M. 1947; (2)En. Sec. 3, Ch. 251, L. 1959; amd. Sec. 235, Ch. 350, L. 1974; Sec. 66-2414, R.C.M. 1947; R.C.M. 1947, 66-2409(2), 66-2414(part).

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Public records, Title 2, ch. 6.

Preservation of records, Title 22, ch. 3, part 2.

Duty of Department to keep records, 37-1-101.

37-69-203. Compensation of board members — expenses. A member of the board is entitled to compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 3, Ch. 203, L. 1949; amd. Sec. 16, Ch. 251, L. 1959; amd. Sec. 2, Ch. 185, L. 1961; amd. Sec. 143, Ch. 147, L. 1963; amd. Sec. 2, Ch. 186, L. 1965; amd. Sec. 229, Ch. 350, L. 1974; amd. Sec. 39, Ch. 439, L. 1975; amd. Sec. 4, Ch. 497, L. 1975; R.C.M. 1947, 66-2403(1); amd. Sec. 34, Ch. 474, L. 1981.

Part 3
Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-69-301. License required — temporary exception by municipal resolution when licensed plumber not available. Any person working at the field of plumbing in any incorporated city, town, or in any other area served by a public water supply or a public sewer system in this state, either as a master plumber or as a journeyman plumber, or who while working at the field of plumbing shall connect plumbing to or disconnect plumbing from a public water supply or public sewer system shall first secure a state license as hereinafter provided. The council or commission of any city or town or board of directors or managers of a water or sewer district or water utility, in cases where a duly licensed person or persons are not reasonably available, may by ordinance, rule, or resolution duly adopted and upon reasonable notice by certified letter to the board of plumbers and upon their approval, or after 30 days from the date of the postmark of the certified letter if the board fails to respond to the certified letter, authorize the practice in the field of plumbing by a person or persons who have not obtained the state licenses as hereinafter provided until such time as a duly licensed person or persons are reasonably available or until the board of plumbers withdraws its authorization.

History: En. Sec. 1, Ch. 203, L. 1949; amd. Sec. 1, Ch. 185, L. 1961; amd. Sec. 1, Ch. 497, L. 1975; R.C.M. 1947, 66-2401(1); amd. Sec. 3, Ch. 661, L. 1985.

Cross-References

"Registered mail" to include registered or certified mail, 1-1-202.

Metropolitan sanitary and/or storm sewer districts, Title 7, ch. 13, part 1.

Municipal sewage and/or water systems, Title 7, ch. 13, part 43.

37-69-302. Apprenticeship allowed. This chapter does not prohibit a person from working as an apprentice in the trade of plumbing with a plumber licensed by the department under the supervision of a licensed journeyman plumber. Only those apprentices registered with the department of labor and industry will be recognized by the department. The name and residence of each apprentice and the names and residences of their employers shall be filed with the department, and a record shall be kept by the department.

History: En. Sec. 6, Ch. 203, L. 1949; amd. Sec. 232, Ch. 350, L. 1974; amd. Sec. 6, Ch. 497, L. 1975; R.C.M. 1947, 66-2406.

Cross-References

Apprenticeship, Title 39, ch. 6, part 1.

37-69-303. Application — contents — requirements. A person, firm, or corporation desiring to engage in or work in the field of plumbing in this state, either as a master plumber or as a journeyman plumber, shall make application to the department by filing a written application stating his place of residence, age, experience, and the place where he has acquired his experience and shall at a time and place designated by the board be examined as to his qualifications for a license.

History: En. Sec. 4, Ch. 203, L. 1949; amd. Sec. 230, Ch. 350, L. 1974; amd. Sec. 5, Ch. 497, L. 1975; R.C.M. 1947, 66-2404(part).

37-69-304. Qualifications of applicants for journeyman plumber's license — restriction on authority. (1) The following requirements must be met by applicants for a journeyman plumber's license:

(a) a specific record of 5 years' experience in the field of plumbing of a character satisfactory to the board. This experience requirement may be fulfilled by working 5 years in a major phase of the plumbing business, verified by time or pay records, or by completing an apprenticeship program meeting the standards set by the department of labor and industry or the United States department of labor, bureau of apprenticeship, or credit towards this experience requirement may be given for time spent attending an accredited trade or other school specializing in training of value in the field of plumbing and approved by the board.

(b) satisfactory completion of an examination conducted by the department, subject to 37-1-101(4), testing the applicant's knowledge of techniques and methods employed in the field of plumbing and establishing by practical demonstration his competence in the special skills required in the field of plumbing.

(2) A licensed journeyman plumber may perform work only in the employment of a licensed master plumber unless otherwise permitted by rule of the board.

History: En. Sec. 2, Ch. 203, L. 1949; amd. Sec. 1, Ch. 186, L. 1965; amd. Sec. 228, Ch. 350, L. 1974; amd. Sec. 3, Ch. 497, L. 1975; amd. Sec. 22, Ch. 101, L. 1977; R.C.M. 1947, 66-2402(2), (3); amd. Sec. 1, Ch. 10, L. 1991.

Cross-References

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Apprenticeship, Title 39, ch. 6, part 1.

37-69-305. Qualifications of applicants for master plumber's license — restriction on authority. (1) The following requirements must be met by an applicant for a master plumber's license:

(a) evidence of 4 years' experience as a licensed journeyman plumber in the field of plumbing, verified by time or pay records of actual plumbing experience;

(b) evidence of 3 years' experience working with a licensed master plumber or in a supervisory capacity in the field of plumbing, which may run concurrently with the requirement in subsection (1)(a); and

(c) satisfactory completion of an examination for master plumbers testing his knowledge of the field of plumbing and demonstrating his skill and ability in the field of plumbing.

(2) For purposes of subsection (1), a year's experience is 1,500 hours or more of work in a continuous 12-month period.

(3) A master plumber may not allow his license to be used by any person or firm, corporation, or business other than his own for the purpose of obtaining permits or for doing plumbing work under his license.

History: (1)En. Sec. 2, Ch. 203, L. 1949; amd. Sec. 1, Ch. 186, L. 1965; amd. Sec. 228, Ch. 350, L. 1974; amd. Sec. 3, Ch. 497, L. 1975; amd. Sec. 22, Ch. 101, L. 1977; Sec. 66-2402, R.C.M. 1947; (2)En. Sec. 4, Ch. 203, L. 1949; amd. Sec. 230, Ch. 350, L. 1974; amd. Sec. 5, Ch. 497, L. 1975; Sec. 66-2404, R.C.M. 1947; R.C.M. 1947, 66-2402(part), 66-2404(part); amd. Sec. 5, Ch. 549, L. 1979; amd. Sec. 1, Ch. 369, L. 1989.

Cross-References

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-69-306. Examination — issuance of license. (1) An applicant for a license to work in the field of plumbing shall be examined as to his qualifications by the department, subject to 37-1-101(4). The department shall examine each applicant for a license to determine his skill and qualifications as a master plumber or journeyman plumber.

(2) The applicant, upon successfully passing the examination prescribed by the board, shall be issued a license authorizing him to engage in the field of plumbing as a master plumber or journeyman plumber in the state of Montana.

(3) In the case of a firm or corporation, the examination and issuance of a license to an individual of the firm or to a principal of the firm or corporation satisfies the requirements of this chapter as to master plumbers but not as to journeyman plumbers. No individual, firm, or corporation may do the work of a master plumber unless licensed under this chapter.

History: (1), (2)En. Sec. 3, Ch. 203, L. 1949; amd. Sec. 16, Ch. 251, L. 1959; amd. Sec. 2, Ch. 185, L. 1961; amd. Sec. 143, Ch. 147, L. 1963; amd. Sec. 2, Ch. 186, L. 1965; amd. Sec. 229, Ch. 350, L. 1974; amd. Sec. 39, Ch. 439, L. 1975; amd. Sec. 4, Ch. 497, L. 1975; Sec. 66-2403, R.C.M. 1947; (3)En. Sec. 4, Ch. 203, L. 1949; amd. Sec. 230, Ch. 350, L. 1974; amd. Sec. 5, Ch. 497, L. 1975; Sec. 66-2404, R.C.M. 1947; R.C.M. 1947, 66-2403(2), 66-2404(part).

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

37-69-307. Examination fee and annual renewal fee. (1) No applicant for a master plumber's license may submit to the examinations prescribed by the board until he has deposited with the department an examination fee prescribed by the board, and no applicant for a journeyman plumber's license may submit to the examination prescribed by the board until he has deposited with the department an examination fee as prescribed by the board.

(2) A license when issued expires each year on the date established by rule of the department. A license issued to a master plumber or a journeyman plumber may be renewed annually without examination, at any time prior to its expiration, by a written request for its renewal directed to the department and the payment of a fee as set by the board for renewal of a master plumber's license or a fee as set by the board for renewal of a journeyman plumber's license. Renewal is for the period of 1 year.

(3) Fees prescribed by the board pursuant to this section must be reasonably related to the costs incurred by the board in carrying out its respective functions.

History: En. Sec. 5, Ch. 203, L. 1949; amd. Sec. 3, Ch. 185, L. 1961; amd. Sec. 1, Ch. 237, L. 1965; amd. Sec. 231, Ch. 350, L. 1974; amd. Sec. 10, Ch. 215, L. 1975; amd. Sec. 3, Ch. 541, L. 1977; R.C.M. 1947, 66-2405; amd. Sec. 6, Ch. 549, L. 1979; amd. Sec. 9, Ch. 390, L. 1983.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-69-308. Deposit of fees. Money paid for license fees under this chapter shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 7, Ch. 203, L. 1949; amd. Sec. 144, Ch. 147, L. 1963; amd. Sec. 233, Ch. 350, L. 1974; R.C.M. 1947, 66-2407; amd. Sec. 1, Ch. 277, L. 1983.

37-69-309. Plumbers licensed by other states — reciprocity. To the extent that other states that provide for the licensing of plumbers provide for similar action, the board may grant licenses to plumbers licensed by other states on payment by the applicant of the required fee and on furnishing proof to the board that the applicant has qualifications at least equal to those provided herein for applicants for written examinations. Applicants who qualify for a license under this section are not required to take a written examination. The board has authority to adopt rules necessary to implement this action.

History: En. Sec. 5, Ch. 661, L. 1985.

37-69-310 through 37-69-319 reserved.

37-69-320. License discipline. (1) The board may revoke, suspend, restrict, censure, or apply any other disciplinary treatment contemplated by 37-1-136 to any occupational licensee under this chapter for any one or more of the following causes:

(a) performance of plumbing work in the field of plumbing that is below the standards established by the Uniform Plumbing Code;

(b) inadequate supervision that causes or allows plumbing work in the field of plumbing that is below the standards established by the Uniform Plumbing Code;

(c) material deceit in procuring, attempting to procure, or aiding and abetting the procurement of an occupational license to practice in the field of plumbing;

(d) unfitness to provide services in the field of plumbing by reason of negligence or addiction to the use of habit-forming drugs;

(e) physical or mental incompetence which impairs the licensee's ability to deliver adequate service in the field of plumbing;

(f) willful or repeated violation of this chapter or rules adopted hereunder or willful or repeated violation of Title 50, chapter 60, part 5, or rules adopted thereunder; or

(g) unprofessional practice-related conduct as defined by rules adopted by the board.

(2) Any licensee disciplinary action under the jurisdiction of the board shall be conducted as a contested case under the provisions of the Montana Administrative Procedure Act.

History: En. Sec. 6, Ch. 661, L. 1985.

37-69-321. Repealed. Sec. 8, Ch. 661, L. 1985.

History: (1)En. Sec. 8, Ch. 203, L. 1949; Sec. 66-2408, R.C.M. 1947; (2)En. Sec. 8, Ch. 251, L. 1959; amd. Sec. 10, Ch. 497, L. 1975; Sec. 66-2419, R.C.M. 1947; R.C.M. 1947, 66-2408, 66-2419.

37-69-322. Revocation or suspension of license — procedure. (1) Proceedings for the revocation or suspension of a journeyman or master plumber's license may be taken by the board on its motion for matters in its knowledge or may be taken on the information of another. Accusations must be in writing and verified by a party familiar with the facts charged.

(2) On receiving the accusation, the board shall, if it considers the accusation sufficient, make an order setting it for hearing and requiring the accused to appear and answer the charge or accusation at the hearing.

(3) If the accused does not appear, the board may proceed and determine the accusation in his absence. If the accused confesses the accusation or refuses to answer the charge or if on the hearing the board finds the charge or accusation true, it may make an order either revoking the license of the accused or suspending it for a fixed period.

History: (1), (2)En. Sec. 9, Ch. 251, L. 1959; amd. Sec. 238, Ch. 350, L. 1974; amd. Sec. 11, Ch. 497, L. 1975; Sec. 66-2420, R.C.M. 1947; (3)En. Sec. 11, Ch. 251, L. 1959; amd. Sec. 239, Ch. 350, L. 1974; Sec. 66-2422, R.C.M. 1947; R.C.M. 1947, 66-2420, 66-2422.

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

Affidavits, Title 26, ch. 1, part 10.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-69-323. Restrictions on and responsibility for employees of master plumber. A licensed master plumber may employ only apprentice plumbers registered with the state department of labor and industry and only journeyman plumbers who are licensed by the state of Montana. A master plumber is responsible for assuring that all work performed by such employees is in compliance with the state plumbing code.

History: En. Sec. 2, Ch. 203, L. 1949; amd. Sec. 1, Ch. 186, L. 1965; amd. Sec. 228, Ch. 350, L. 1974; amd. Sec. 3, Ch. 497, L. 1975; amd. Sec. 22, Ch. 101, L. 1977; R.C.M. 1947, 66-2402(part).

Cross-References

Apprenticeship, Title 39, ch. 6, part 1.

37-69-324. Penalty. A person who works at the field of plumbing or maintains or conducts a plumbing business or an individual who connects or disconnects plumbing from a public water or sewer system in violation of any provisions of this chapter or at a time when he is not exempt from the provisions of this chapter pursuant to the provisions of a duly enacted and subsisting ordinance of a city or town is guilty of a misdemeanor and, upon conviction thereof in any court of competent jurisdiction, is guilty of a misdemeanor. However, this chapter may not be construed to apply to or affect plumbing or pipefitting as indicated in the 37-69-102 exceptions.

History: En. Sec. 11, Ch. 203, L. 1949; amd. Sec. 4, Ch. 185, L. 1961; amd. Sec. 7, Ch. 497, L. 1975; amd. Sec. 23, Ch. 101, L. 1977; R.C.M. 1947, 66-2411; amd. Sec. 7, Ch. 661, L. 1985.

Cross-References

"Misdemeanor" defined, 45-2-101.

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Misdemeanor penalty when no penalty specified, 46-18-212.

CHAPTER 70

HEATING, VENTILATION, AIR CONDITIONING

(Repealed. Sec. 195, Ch. 575, L. 1981)

Chapter Compiler's Comments

Histories of Repealed Sections:

37-70-101. En. 66-3501 by Sec. 2, Ch. 504, L. 1975; R.C.M. 1947, 66-3501.

37-70-102. En. 66-3502 by Sec. 3, Ch. 504, L. 1975; R.C.M. 1947, 66-3502.

37-70-103. En. 66-3503 by Sec. 4, Ch. 504, L. 1975; R.C.M. 1947, 66-3503.

37-70-104. En. 66-3515 by Sec. 16, Ch. 504, L. 1975; R.C.M. 1947, 66-3515.

37-70-201. En. 82A-1602.29 by Sec. 1, Ch. 504, L. 1975; R.C.M. 1947, 82A-1602.29(5), (6).

37-70-202. En. 66-3504 by Sec. 5, Ch. 504, L. 1975; R.C.M. 1947, 66-3504.

37-70-203. En. 82A-1602.29 by Sec. 1, Ch. 504, L. 1975; R.C.M. 1947, 82A-1602.29(4); amd. Sec. 28, Ch. 22, L. 1979.

37-70-301. En. 66-3513 by Sec. 14, Ch. 504, L. 1975; R.C.M. 1947, 66-3513.

37-70-302. En. 66-3508 by Sec. 9, Ch. 504, L. 1975; R.C.M. 1947, 66-3508.

37-70-303. En. 66-3506 by Sec. 7, Ch. 504, L. 1975; R.C.M. 1947, 66-3506.

37-70-304. En. 66-3509 by Sec. 10, Ch. 504, L. 1975; R.C.M. 1947, 66-3509.

37-70-305. En. 66-3505 by Sec. 6, Ch. 504, L. 1975; amd. Sec. 31, Ch. 101, L. 1977; R.C.M. 1947, 66-3505.

37-70-306. En. 66-3511 by Sec. 12, Ch. 504, L. 1975; R.C.M. 1947, 66-3511.

37-70-307 through 37-70-310 reserved.

37-70-311. En. 66-3512 by Sec. 13, Ch. 504, L. 1975; R.C.M. 1947, 66-3512.

37-70-312. En. 66-3514 by Sec. 15, Ch. 504, L. 1975; R.C.M. 1947, 66-3514(part).

CHAPTER 71

PUBLIC CONTRACTORS

Part 1 — General Provisions

37-71-101. Definitions.
37-71-102. Administrative powers of department.
37-71-103. Rules.
37-71-104. Records.
37-71-105. Disposal of fees.

Part 2 — Licensing

37-71-201. Unlawful to engage in public contracting business without license.
37-71-202. Certain small or federal public contracts exempt.
37-71-203. Bids to show bidder is licensed.
37-71-204. Classes of licenses — fees.
37-71-205 through 37-71-210 reserved.
37-71-211. Application for license — contents.
37-71-212. Investigation of applicant — issuance of license.
37-71-213. Renewal — waiting period after cancellation.

Part 3 — Enforcement and Penalties
37-71-301. Complaints against licensee — grounds — investigation — hearing — suspension of license — appeals.
37-71-302. Penalty.

Part 1
General Provisions

37-71-101. Definitions. The following words, terms, and phrases in this chapter are, for the purposes hereof, defined as follows:

(1) "Department", unless the context clearly indicates otherwise, means the department of commerce as provided in 2-15-1801.

(2) "Field of contracting" includes but is not limited to the distinct fields of general contracting, mechanical contracting, electrical contracting, and plumbing, heating, and air-conditioning contracting.

(3) A "public contractor", within the meaning of this chapter, includes any person who submits a proposal to or enters into a contract for performing public construction work in the state with the federal government or state of Montana, or with any board, commission, or department thereof, or with any board of county commissioners or any city or town council, or with any agency of any of them, or with any other public board, body, commission, or agency authorized to let or award contracts for any public work when the contract cost, value, or price thereof exceeds the sum of $5,000.

(4) The term "public contractor" includes subcontractors undertaking to perform work within their field of contracting and within the limits of their class of license covered by the original contract or any part thereof, the contract cost, value, or price of which exceeds the sum of $5,000.

History: (1)En. Sec. 1, Ch. 178, L. 1935; re-en. Sec. 2433.1, R.C.M. 1935; amd. Sec. 1, Ch. 195, L. 1967; amd. Sec. 12, Ch. 52, L. 1977; Sec. 84-3501, R.C.M. 1947; (2)En. Sec. 3, Ch. 178, L. 1935; re-en. Sec. 2433.3. R.C.M. 1935; amd. Sec. 143, Ch. 516, L. 1973; Sec. 84-3503, R.C.M. 1947; R.C.M. 1947, 84-3501, 84-3503(part); amd. Sec. 1, Ch. 152, L. 1983; amd. Sec. 1, Ch. 240, L. 1983; MCA 1981, 15-50-101; redes. 37-71-101 by Code Commissioner, 1983; 37-71-101(3) redes. 15-50-101 by Code Commissioner, 1985.

37-71-102. Administrative powers of department. The department is empowered to employ such assistance and to procure such records, supplies, and equipment as may be necessary to carry out the provisions of this chapter.

History: En. Sec. 3, Ch. 178, L. 1935; re-en. Sec. 2433.3, R.C.M. 1935; amd. Sec. 143, Ch. 516, L. 1973; R.C.M. 1947, 84-3503(part); amd. Sec. 2, Ch. 240, L. 1983; MCA 1981, 15-50-102; redes. 37-71-102 by Code Commissioner, 1983.

37-71-103. Rules. The department shall establish rules necessary for the effective implementation of the provisions of this chapter.

History: En. Sec. 5, Ch. 195, L. 1967; amd. Sec. 145, Ch. 516, L. 1973; R.C.M. 1947, 84-3515(part); amd. Sec. 3, Ch. 240, L. 1983; MCA 1981, 15-50-103; redes. 37-71-103 by Code Commissioner, 1983.

37-71-104. Records. The department shall maintain at Helena, Montana, open to public inspection during office hours, a complete indexed record of all applications and all licenses issued and all certificates of renewal and of cancellations or suspensions thereof and shall furnish a certified copy of any license issued, of renewal certificates, or of the cancellations or suspensions thereof, upon receipt of the sum of $1, and such certified copy shall be received in all courts and elsewhere as prima facie evidence of the facts stated therein.

History: En. Sec. 9, Ch. 178, L. 1935; re-en. Sec. 2433.9, R.C.M. 1935; R.C.M. 1947, 84-3509; amd. Sec. 4, Ch. 240, L. 1983; MCA 1981, 15-50-104; redes. 37-71-104 by Code Commissioner, 1983.

Cross-References

Public records generally, Title 2, ch. 6, part 1.

37-71-105. Disposal of fees. All moneys collected hereunder shall be deposited by the department with the state treasurer, who shall credit them to the general fund of the state.

History: En. Sec. 8, Ch. 178, L. 1935; re-en. Sec. 2433.8, R.C.M. 1935; amd. Sec. 2, Ch. 266, L. 1971; R.C.M. 1947, 84-3508; amd. Sec. 5, Ch. 240, L. 1983; MCA 1981, 15-50-105; redes. 37-71-105 by Code Commissioner, 1983.

Part 2
Licensing

Part Cross-References

Department of Commerce to determine residency of public contractors, 18-1-106.

37-71-201. Unlawful to engage in public contracting business without license. It shall be unlawful for any person or any combination of persons to engage in the business or act in the capacity of public contractor as herein defined within the state of Montana without having a license therefor as herein provided.

History: En. Sec. 2, Ch. 178, L. 1935; re-en. Sec. 2433.2, R.C.M. 1935; amd. Sec. 13, Ch. 52, L. 1977; R.C.M. 1947, 84-3502; MCA 1981, 15-50-201; redes. 37-71-201 by Code Commissioner, 1983.

37-71-202. Certain small or federal public contracts exempt. Nothing herein shall require any contractor to pay any license fee on any public contract project of a value less than $5,000, nor shall any contractor be required to have a license hereunder in order to submit a bid or proposal for contracts advertised to be let by the Montana highway commission where federal aid is obtained from the bureau of public roads or the department of agriculture of the United States, neither shall a successful bidder be required to be licensed as provided herein before the awarding and execution of any contract to be let by the state highway commission where federal aid from the bureau of public roads or the department of agriculture of the United States is involved.

History: En. Sec. 5, Ch. 178, L. 1935; re-en. Sec. 2433.5, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1939; amd. Sec. 2, Ch. 195, L. 1967; amd. Sec. 1, Ch. 180, L. 1974; R.C.M. 1947, 84-3505(6); amd. Sec. 2, Ch. 152, L. 1983; MCA 1981, 15-50-202; redes. 37-71-202 by Code Commissioner, 1983.

37-71-203. Bids to show bidder is licensed. All bids and proposals for the construction of any public contract project subject to the provisions of this chapter shall contain a statement showing that the bidder or contractor is duly and regularly licensed hereunder. The number and class of such license then held by such public contractor shall appear upon such bid or proposal, and no contract shall be awarded to any contractor unless he is the holder of a license in the class within which the value of the project shall fall as herein provided.

History: En. Sec. 7, Ch. 178, L. 1935; re-en. Sec. 2433.7, R.C.M. 1935; amd. Sec. 3, Ch. 141, L. 1967; R.C.M. 1947, 84-3507; MCA 1981, 15-50-203; redes. 37-71-203 by Code Commissioner, 1983; amd. Sec. 1, Ch. 87, L. 1985.

37-71-204. Classes of licenses — fees. (1) Within each field of contracting there shall be three classes of licenses issued under the provisions of this chapter, and such classes of licenses are hereby designated as Classes A, B, and C. Any applicant for a license under the provisions hereof shall specify in his application the field and the class of license applied for.

(2) In any field of contracting:

(a) the holder of a Class A license shall be entitled to engage in the public contracting business within the state without any limitation as to the value of a single public contract project; subject, however, to such prequalification requirements as may be imposed by the public body or bodies referred to in 37-71-101(3). At the time of making the application for such license, the applicant shall pay to the department a fee in the sum of $250.

(b) the holder of a Class B license shall be entitled to engage in the public contracting business within the state but shall not be entitled to engage in the construction of any single public contract project of a value in excess of $100,000 and shall pay to the department as a license fee the sum of $150 for such Class B license at the time of making application therefor;

(c) the holder of a Class C license shall be entitled to engage in the public contracting business within the state but shall not be entitled to engage in the construction of any single public contract project of a value in excess of $25,000 and shall pay to the department as a license fee the sum of $100 at the time of making application therefor.

(3) If a holder of a license for any class within a field of contracting applies for another license for the same class but within a different field of contracting, he shall pay a fee equal to 25% of the fee for the appropriate class of license as provided in subsection (2) to be licensed in the additional field. If an applicant for a license for any class within a field of contracting at the same time applies for a license for the same class but within a different field of contracting, he shall pay the fee for the appropriate class of license as provided in subsection (2) to be licensed in one of the fields of contracting plus 25% of the fee for the same class to be licensed in the other field.

History: En. Sec. 5, Ch. 178, L. 1935; re-en. Sec. 2433.5, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1939; amd. Sec. 2, Ch. 195, L. 1967; amd. Sec. 1, Ch. 180, L. 1974; R.C.M. 1947, 84-3505(1) thru (4); amd. Sec. 6, Ch. 240, L. 1983; MCA 1981, 15-50-204; redes. 37-71-204 by Code Commissioner, 1983.

37-71-205 through 37-71-210 reserved.

37-71-211. Application for license — contents. To obtain a license under this chapter, the applicant shall submit on such forms as the department shall prescribe an application, under oath, which shall contain a statement of the applicant's experience and qualifications as a contractor; the value and character of contract work completed and for whom performed during 5 years prior to the filing of such application; and a complete financial statement on such forms and disclosing such information as shall be required by the department. Such application shall also contain such other information as may be requested by the department under such rules as may be adopted by the department and which will assist the department in determining the applicant's fitness to act in the capacity of a public contractor as defined in this chapter. Such application shall also contain a statement that the applicant desires the issuance of a license under the terms of this chapter and shall specify the field of contracting and the class of license applied for.

History: En. Sec. 4, Ch. 178, L. 1935; re-en. Sec. 2433.4, R.C.M. 1935; R.C.M. 1947, 84-3504; amd. Sec. 9, Ch. 240, L. 1983; MCA 1981, 15-50-211; redes. 37-71-211 by Code Commissioner, 1983.

Cross-References

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-71-212. Investigation of applicant — issuance of license. It shall be the duty of the department to investigate and determine the applicant's fitness to act in the capacity of public contractor as defined in this chapter, and no license shall be issued to such applicant until the expiration of 10 days from and after the filing of such application. The license so issued in pursuance of the first application shall entitle the licensee to act as a public contractor within this state, subject to the limitations of such license, until the expiration of the then-current calendar year.

History: En. Sec. 6, Ch. 178, L. 1935; re-en. Sec. 2433.6, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1937; R.C.M. 1947, 84-3506(part); amd. Sec. 10, Ch. 240, L. 1983; MCA 1981, 15-50-212; redes. 37-71-212 by Code Commissioner, 1983.

37-71-213. Renewal — waiting period after cancellation. (1) Any license issued under the provisions of this chapter may be renewed for each successive calendar year by obtaining from the department a certificate of renewal thereof. For the purpose of obtaining such certificate of renewal, the licensee shall file with the department an application therefor, stating the field of contracting and class of license applied for and containing at least the same information as that required in the application for the original license. The application for such certificate of renewal must be made to the department on or before March 1 of each successive calendar year, and such renewal certificate shall be good for the then-current calendar year.

(2) At the time of filing the application for a certificate of renewal, the applicant shall pay to the department a license fee equal to 50% of the license fee for the original license, provided that if any applicant for a certificate of renewal shall apply for a renewal under a different field or class from the license theretofore issued to him, such new license shall be issued only upon the same showing and under the same terms and conditions and upon payment of the same fee required for the issuance of an original license.

(3) All certificates of renewal wherein the applicant does not apply for a change in the field or class of license shall be issued by the department to the applicant forthwith when the application is filed and the license renewal fee paid.

(4) After cancellation of a license, such licensee shall not be relicensed during the current calendar year in which the offense was committed.

History: (1) thru (3)En. Sec. 6, Ch. 178, L. 1935; re-en. Sec. 2433.6, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1937; Sec. 84-3506, R.C.M. 1947; (4)En. Sec. 11, Ch. 178, L. 1935; re-en.

Sec. 2433.11, R.C.M. 1935; Sec. 84-3511, R.C.M. 1947; R.C.M. 1947, 84-3506(part), 84-3511; amd. Sec. 11, Ch. 240, L. 1983; MCA 1981, 15-50-213; redes. 37-71-213 by Code Commissioner, 1983.

Part 3

Enforcement and Penalties

37-71-301. Complaints against licensee — grounds — investigation — hearing — suspension of license — appeals. (1) Any person or other organization may file a duly verified complaint with the department charging that the licensee is guilty of one or more of the following acts or omissions:

(a) abandonment of any contract without legal excuse;

(b) diversion of funds or property received under express agreement for prosecution or completion of a specific contract under this chapter or for a specified purpose in the prosecution or completion of any contract and their application or use for any other contract, obligation, or purpose with intent to defraud or deceive creditors or the owner;

(c) the doing of any willful fraudulent act by the licensee as a public contractor in consequence of which another is substantially injured;

(d) the making of any false statement in any application for a license or renewal thereof;

(e) the failure to comply with the provisions of 18-1-112 requiring preference of products manufactured or produced in this state by Montana industry and labor.

(2) Upon the filing of such complaint, the department shall investigate the charge and within 60 days after the filing of such complaint render and file a decision, with the reasons therefor. If the department's decision be that the licensee has been guilty of any of such acts or omissions, the department shall suspend the contractor's license. At any time within 20 days thereafter, the complainant or the contractor may petition the department for a rehearing. In the order granting or denying such rehearing, the department shall set forth a statement of the particular grounds and reasons for the department's actions on such petition and shall mail a copy of such order to the parties who have appeared in support of or in opposition to the petition for rehearing. If a rehearing be granted, the department shall set the matter for further hearing on due notice to the parties and, within 30 days after submission of the matter, serve the department's decision after rehearing in like manner as an original decision.

(3) The filing of such petition for rehearing as to the department's actions in suspending or canceling such license shall suspend the operation of such action and permit the licensee to continue to do business as a public contractor pending final determination of the controversy.

(4) Within 30 days after the decision on rehearing, any party aggrieved by such decision of the department may appeal therefrom to the district court in and for the county in which the licensee under this chapter resides or does business as a public contractor by serving upon the department a notice of such appeal. The matter shall thereupon be heard de novo by the district court.

An appeal may be taken from the decision of the district court in the same manner as appeals in other civil cases.

(5) In all cases where the licensee has filed his notice of appeal from the decision of the department or from the decision of the district court, such licensee shall be entitled to continue to do business as a public contractor pending final decision of the controversy.

History: En. Sec. 10, Ch. 178, L. 1935; re-en. Sec. 2433.10, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1969; amd. Sec. 14, Ch. 52, L. 1977; R.C.M. 1947, 84-3510; amd. Sec. 12, Ch. 240, L. 1983; MCA 1981, 15-50-302; redes. 37-71-301 by Code Commissioner, 1983.

Cross-References

Suspension of license for violation of certain labor laws, 18-2-432.

Montana Rules of Appellate Procedure, Title 25, ch. 21.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-71-302. Penalty. Any person or other organization acting in the capacity of public contractor within the meaning of this chapter without a license as herein provided shall be guilty of a misdemeanor and shall upon conviction thereof, if an individual, be punished by a fine of not to exceed $500 or by imprisonment in the county jail for a term not to exceed 6 months or by both such fine and imprisonment, in the discretion of the court. The same penalties shall apply upon conviction to any member of a partnership or to any construction, managing, or directing officer of any corporation or other organization consenting to, participating in, or aiding or abetting any such violation of this chapter.

History: En. Sec. 12, Ch. 178, L. 1935; re-en. Sec. 2433.12, R.C.M. 1935; amd. Sec. 15, Ch. 52, L. 1977; R.C.M. 1947, 84-3512; MCA 1981, 15-50-303(1); redes. 37-71-302 by Code Commissioner, 1983; Sec. 37-71-302(2) redes. 15-50-301(2) by Code Commissioner, 1985.

CHAPTER 72

CONSTRUCTION BLASTING

Part 1 — General

37-72-101. Construction blasting restrictions — license required — definitions — exemptions.
37-72-102. Penalty — injunction.

Part 2 — Regulation by Department of Labor and Industry

37-72-201. Rules for use of explosives — variances.
37-72-202. General rulemaking power.
37-72-203. Revocation, suspension, or refusal to renew license — grounds — procedure.

Part 3 — Licensing

37-72-301. General qualifications.
37-72-302. Training and experience requirements.
37-72-303. Licensure by examination — fee.
37-72-304. Issuance of license — fee.
37-72-305. Licensure of persons licensed by other jurisdictions.
37-72-306. Annual renewal.
37-72-307. License — form — pocket card.

Chapter Cross-References

Regulation of explosives and inflammable material by local governments, 7-33-4205.

Part 1
General

37-72-101. Construction blasting restrictions — license required — definitions — exemptions. (1) No person may engage in the practice of construction blasting unless licensed or under the supervision of a person licensed as a construction blaster by the department.

(2) For the purposes of this chapter:

(a) "construction blaster" means a person who engages in construction blasting;

(b) "construction blasting" means the use of explosives to:

(i) reduce, destroy, or weaken any residential, commercial, or other building; or

(ii) excavate any ditch, trench, cut, or hole or reduce, destroy, weaken, or cause a change in grade of any land formation in the construction of any building, highway, road, pipeline, sewerline, or electric or other utility line;

(c) "department" means the department of labor and industry;

(d) "explosive" has the meaning given in 61-1-506.

(3) Nothing in this chapter applies to the private or commercial use of explosives by persons engaged in farming, ranching, logging, geophysical work, drilling or development of water, oil, or gas wells, or mining of any kind or to the private use of explosives in the removal of stumps and rocks from land owned by the person using the explosives, except that the persons exempted from this chapter by this subsection must comply with rules adopted under 37-72-201(1)(c) and the provisions of 37-72-102 apply to a violation of those rules by an exempted person.

(4) This chapter does not apply to persons conducting blasting operations when the persons and operations are subject to rules adopted under and implementing 82-4-231(10)(e).

History: En. Sec. 1, Ch. 402, L. 1985; amd. Sec. 94, Ch. 370, L. 1987; amd. Sec. 54, Ch. 83, L. 1989; amd. Sec. 47, Ch. 613, L. 1989.

Cross-References

Reckless or malicious use of explosives, 45-8-333.

Possession of explosives, 45-8-335.

37-72-102. Penalty — injunction. (1) A person convicted of violating any provision of this chapter or the rules of the department is guilty of a misdemeanor and shall be imprisoned in the county jail for a term not to exceed 6 months or fined an amount not to exceed $500, or both.

(2) The district court may enjoin any violation or threatened violation of the requirements of 37-72-101, 37-72-201, 37-72-202, or 37-72-301 through 37-72-307 or the rules of the department as a nuisance per se; and the department, the attorney general, or any county attorney may institute proceedings for an injunction.

History: En. Sec. 12, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Part 2
Regulation by Department of Labor and Industry

37-72-201. Rules for use of explosives — variances. (1) The department shall adopt rules governing the use of explosives in construction blasting. The rules must include provisions to:

(a) regulate the method of withdrawal of explosives from the construction magazine in which they are kept;

(b) prevent the accidental detonation of explosives;

(c) prevent injury from blasting to persons and property near blast sites;

(d) provide for notification of blasting to the owners or operators of gas and electric utilities; and

(e) regulate the drilling of holes for explosives and the loading and firing of explosives.

(2) The department shall adopt rules providing for variances from the rules required by subsection (1). Variances may be granted by the department on a case-by-case basis for the purpose of individual construction blasting operations only if it is shown by the affidavit of a construction blaster licensed under this chapter that:

(a) compliance with the rule for which a variance is sought would be impracticable; and

(b) the proposed variance from department rules will not constitute a danger to property or public safety.

History: En. Sec. 9, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

37-72-202. General rulemaking power. The department shall adopt rules to:

(1) implement the training and experience requirements of 37-72-302;

(2) prescribe the amount of the fees provided for in 37-72-301 and 37-72-303 through 37-72-306, which must be nonrefundable, in an amount commensurate with the cost of administering this chapter, and deposited in the state special revenue fund for the use of the department;

(3) regulate the use of explosives and grant variances under the provisions of 37-72-201, except that, unless the department is making an investigation under 37-72-203(2), the department does not have the power under this chapter to make inspections into construction blasting and may not adopt rules providing for such inspections or for inspectors to carry out such inspections;

(4) provide for the form of the license and pocket card provided for in 37-72-307; and

(5) provide for the conduct of the business of the department under this chapter and govern its proceedings under 37-72-203.

History: En. Sec. 10, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

37-72-203. Revocation, suspension, or refusal to renew license — grounds — procedure. (1) The department may reprimand or revoke, suspend, or refuse to renew the license of a person found guilty of:

(a) fraud or deceit in obtaining a license;

(b) gross negligence, incompetency, or misconduct in the practice of construction blasting;

(c) a felony involving the use of explosives; or

(d) violation of the rules of the department.

(2) A person may make charges under subsection (1) against a licensee. The charges must be made by affidavit, subscribed and sworn to by the person making them, and filed with the department. The charges must be investigated by the department. Unless the department, after investigation, dismisses the charges as unfounded or trivial, it shall within 6 months after the date on which the charges were made give notice by mail to the licensee of its intent to reprimand him or to revoke, suspend, or refuse to renew his license. The notice must contain those matters required by the Montana Administrative Procedure Act.

(3) The department may require a licensee to take a written or oral examination, or both, in a proceeding to reprimand or to revoke, suspend, or refuse to renew a license.

History: En. Sec. 11, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

"Destructive device" and "explosive" defined, 45-8-332.

Reckless or malicious use of explosives, 45-8-333.

Possession of destructive device, 45-8-334.

Possession of explosives, 45-8-335.

Possession of bomb or similar device prima facie evidence of unlawful purpose, 45-8-337.

Part 3

Licensing

Part Cross-References

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-72-301. General qualifications. A person making initial application to the department for a license as a construction blaster shall:

(1) pay an application fee to the department; and

(2) furnish proof under oath, on a form provided by the department, that he:

(a) is at least 18 years old;

(b) is of good moral character;

(c) has not been convicted of a felony or misdemeanor involving the use of explosives;

(d) is not addicted to narcotic drugs or intemperate in the use of alcohol; and

(e) has satisfied the requirements for training and experience in construction blasting established by 37-72-302 and the rules of the department.

History: En. Sec. 2, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

37-72-302. Training and experience requirements. (1) A person applying for licensure as a construction blaster shall furnish proof, under oath, on a form provided by the department, that he has:

(a) successfully completed a training program in construction blasting that has been recognized by the explosives or construction industry and approved by the department; and

(b) at least 1 year of posttraining experience in construction blasting and because of that experience is familiar with the practical aspects of construction blasting.

(2) No training program may be approved by the department that does not offer comprehensive instruction in types of explosives, methods and purposes of their use, and safety and storage. The department shall by rule adopt a list of approved training programs.

History: En. Sec. 3, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

37-72-303. Licensure by examination — fee. (1) The department shall, at least once a year, administer an examination to applicants meeting the requirements of 37-72-301 and 37-72-302 and the rules adopted by the department. The department shall determine the subjects, scope, and acceptable level of performance for all examinations. The examination may be written, oral, or both. The examination shall at a minimum test the applicant's knowledge of the rules of the department governing construction blasting.

(2) An applicant for licensure by examination shall pay an examination fee to the department.

(3) An applicant for a license who has previously taken and failed the examination required by this section may retake it at any time within 2 years without again furnishing proof of compliance with 37-72-302, upon payment to the department of a reexamination fee.

History: En. Sec. 4, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

37-72-304. Issuance of license — fee. Upon receipt of a license fee, the department shall issue a license to each person who meets the requirements for licensure as prescribed in this chapter. The license must include the dates of issuance and expiration and a serial number. It must be signed by the department.

History: En. Sec. 5, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

37-72-305. Licensure of persons licensed by other jurisdictions. Upon receipt of a license fee, the department shall issue a license to any person fulfilling the requirements of 37-72-301(2)(a) through (2)(d) who holds a certificate, license, or permit, issued by another state or any agency of the United States, allowing him to supervise or engage in the practice of construction blasting if the department finds that the certificate, license, or permit was issued upon the satisfactory completion of requirements substantially equivalent to the requirements of 37-72-301 through 37-72-303.

History: En. Sec. 6, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

37-72-306. Annual renewal. (1) A license issued under this chapter expires January 1 following the date of its issuance or renewal and is invalid thereafter. The department shall notify each person licensed under this chapter of the date of the expiration of his license and the amount of his renewal fee. The notice must be mailed to each licensed construction blaster at his listed address at least 1 month before the expiration of his license.

(2) Renewal may be made by application during the 60 days prior to the expiration date. Failure on the part of a licensee to pay his renewal fee by the expiration date does not deprive him of the right to renew his license, but the fee must be increased 10% for each month or major portion thereof that the payment of the renewal fee is delayed after the expiration date. The maximum fee for delayed renewal may not exceed twice the normal renewal fee. Application for renewal following a lapse of 1 year or more is subject to review by the department, and the applicant may be required to successfully complete an examination.

History: En. Sec. 7, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

37-72-307. License — form — pocket card. (1) The department shall prescribe the form of license.

(2) The department shall annually prepare and deliver a pocket card certifying that the person whose name appears on the card is a licensed construction blaster and stating the period for which fees have been paid.

History: En. Sec. 8, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

CHAPTERS 73 AND 74

RESERVED

CHAPTER 75

DIRECT-ENTRY MIDWIFERY

(Renumbered by Code Commissioner, 1991)

Chapter Compiler's Comments

Sections Renumbered:

37-75-101. Renumbered 37-27-111.

37-75-102. Not codified.

Histories of Sections Not Codified:

37-75-102. En. Sec. 2, Ch. 493, L. 1989.

TITLE 38

RESERVED

TITLE 39

LABOR

Ch.
1. Department of Labor and Industry.
2. The Employment Relationship.
3. Wages and Wage Protection.
4. Hours of Labor in Certain Employments.
5. The Employment Agency Act.
6. Apprenticeship.
7. Women in Employment — Displaced Homemakers.
Chapters 8 through 28 reserved.
29. Veterans' Public Employment Preference.
30. Handicapped Persons' Public Employment Preference.
31. Collective Bargaining for Public Employees.
32. Collective Bargaining for Nurses.
33. General Limitations on Collective Bargaining Rights.
34. Arbitration for Firefighters.
Chapters 35 through 50 reserved.
51. Unemployment Insurance.
Chapters 52 through 70 reserved.
71. Workers' Compensation.
72. Occupational Disease Act of Montana.
73. Silicosis Benefits.

CHAPTER 1

DEPARTMENT OF LABOR AND INDUSTRY

Part 1 — General Provisions

39-1-101. Definitions.
39-1-102. Duties of department.
39-1-103. Powers of department.
39-1-104. Cooperation with federal government.

Part 1
General Provisions

39-1-101. Definitions. As used in this chapter, unless the context requires otherwise the following definitions apply:

(1) "Commissioner" means the commissioner of labor and industry as provided for in 2-15-1701.

(2) "Department" means the department of labor and industry as provided for in 2-15-1701.

History: En. 39-1-101 by Sec. 1, Ch. 397, L. 1979.

39-1-102. Duties of department. The department shall enforce all the laws of Montana relating to hours of labor, conditions of labor, prosecution of employers who default in payment of wages, protection of employees, and all laws relating to child labor which regulate the employment of children in any manner and shall administer the laws of the state relating to free employment offices and all other state labor laws.

History: **En. Sec. 5, Ch. 177, L. 1951; amd. Sec. 1, Ch. 451, L. 1975; R.C.M. 1947, 41-1605(1); amd. Sec. 2, Ch. 397, L. 1979.**

Cross-References

Eight-hour day maximum, Art. XII, sec. 2, Mont. Const.

"Department" defined, 39-1-101.

Free public employment offices, 39-51-307.

39-1-103. Powers of department. (1) In discharging the duties imposed upon the department, the commissioner or his authorized representatives may administer oaths, examine witnesses under oath, take depositions or cause same to be taken, deputize any citizen 18 years of age or older to serve subpoenas upon witnesses, and issue subpoenas for the attendance of witnesses before him in the same manner as for attendance before district courts.

(2) The commissioner may likewise cause to be inspected any mine, factory, workshop, smelter, mill, warehouse, elevator, foundry, machine shop, or other industrial establishment.

(3) Nothing in this chapter applies to labor violations preempted by federal law or regulation.

History: **En. Sec. 5, Ch. 177, L. 1951; amd. Sec. 1, Ch. 451, L. 1975; R.C.M. 1947, 41-1605(2); amd. Sec. 50, Ch. 613, L. 1989.**

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

Subpoena, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

Workers' Compensation Act, Title 39, ch. 71.

39-1-104. Cooperation with federal government. The department may and is hereby authorized to assist and cooperate with the wage and hour division and the children's bureau, U.S. department of labor, in the enforcement within this state of the Fair Labor Standards Act of 1938, approved June 25, 1938, and, subject to the regulations of the administrator of the wage and hour division or the chief of the children's bureau, as the case may be, and the laws of the state applicable to the receipt and expenditure of moneys, may be reimbursed by said wage and hour division or said children's bureau for the reasonable cost of such assistance and cooperation.

History: **En. Sec. 1, Ch. 56, L. 1939; R.C.M. 1947, 41-1137.**

CHAPTER 2

THE EMPLOYMENT RELATIONSHIP

Part 1 — General Provisions

39-2-101. Employment defined.
39-2-102. What belongs to employer.
39-2-103. Confidential employment.

Part 2 — General Obligations of Employers

39-2-201. Seats for employees.

Part 3 — General Prohibitions on Employers

39-2-301. Unlawful for employer to require employee to pay cost of medical examination as condition of employment.
39-2-302. Discharge or layoff of employee because of attachment or garnishment prohibited.
39-2-303. Deception as to character of employment, conditions of work, or existence of labor dispute prohibited.
39-2-304. Lie detector tests prohibited — regulation of blood and urine testing.
39-2-305. Employment of aliens not lawfully authorized to accept employment prohibited.
39-2-306. Employment of persons under eighteen as bartenders prohibited.
39-2-307 through 39-2-312 reserved.
39-2-313. Discrimination prohibited for use of lawful product during nonworking hours — exceptions.
39-2-314. Civil action limitation.

Part 4 — General Obligations of Employees

39-2-401. Duties of gratuitous employee.
39-2-402. Duties of employee for reward.
39-2-403. Duties of employee for his own benefit.
39-2-404. Employee must obey employer.
39-2-405. Employee must conform to usage.
39-2-406. Degree of skill required.
39-2-407. Duty to account.
39-2-408. Duty of employee regarding items received on account of his employer.
39-2-409. Preference to be given to employer's business.
39-2-410. Responsibility of employee for substitute.
39-2-411. Surviving employee.

Part 5 — Termination of Employment

39-2-501. Termination of employment generally.
39-2-502. Termination by death or incapacity of employer.
39-2-503. Termination at will.
39-2-504. Repealed.
39-2-505. Repealed.

Part 6 — Master and Servant

39-2-601. Servant defined.
39-2-602. Term of hiring.
39-2-603. Renewal of hiring.
39-2-604. Time of service.
39-2-605. Servant to pay over without demand.
39-2-606. When servant may be discharged.

Part 7 — General Liability Arising From Employment Relationship

39-2-701. Indemnification of employee.
39-2-702. Liability of employee for negligence.
39-2-703. Liability of railway corporation for negligence of fellow servants.
39-2-704. Liability of mining company for negligence of fellow servants.
39-2-705. Contract discharging employer liability for negligence void.

Part 8 — Blacklisting and Protection of Discharged Employees

39-2-801. Employee to be furnished on demand with reason for discharge.
39-2-802. Protection of discharged employees.
39-2-803. Blacklisting prohibited.
39-2-804. Violation of part a misdemeanor.

Part 9 — Wrongful Discharge From Employment

39-2-901. Short title.

39-2-902. Purpose.
39-2-903. Definitions.
39-2-904. Elements of wrongful discharge.
39-2-905. Remedies.
39-2-906 through 39-2-910 reserved.
39-2-911. Limitation of actions.
39-2-912. Exemptions.
39-2-913. Preemption of common-law remedies.
39-2-914. Arbitration.
39-2-915. Effect of rejection of offer to arbitrate.

Part 10 — Closure of or Layoff at Governmental Facility

39-2-1001. Purpose.
39-2-1002. Definitions.
39-2-1003. Requirements for closure or retrenchment.
39-2-1004. Adoption of rules.

Chapter Cross-References

Veterans — employment, Title 10, ch. 2, part 2.

Arbitration between employer and employee, Title 27, ch. 5.

Labor disputes — injunctions not allowed, 27-19-103.

Veterans' public employment preference, Title 39, ch. 29.

Handicapped persons' public employment preference, Title 39, ch. 30.

Child labor, Title 41, ch. 2.

Part 1
General Provisions

39-2-101. Employment defined. The contract of employment is a contract by which one, who is called the employer, engages another, who is called the employee, to do something for the benefit of the employer or a third person.

History: En. Sec. 2650, Civ. C. 1895; re-en. Sec. 5241, Rev. C. 1907; re-en. Sec. 7756, R.C.M. 1921; Cal. Civ. C. Sec. 1965; Field Civ. C. Sec. 1004; re-en. Sec. 7756, R.C.M. 1935; R.C.M. 1947, 41-101.

39-2-102. What belongs to employer. Everything which an employee acquires by virtue of his employment, except the compensation, if any, which is due to him from his employer, belongs to the latter, whether acquired lawfully or unlawfully or during or after the expiration of the term of his employment.

History: En. Sec. 2680, Civ. C. 1895; re-en. Sec. 5263, Rev. C. 1907; re-en. Sec. 7778, R.C.M. 1921; Cal. Civ. C. Sec. 1985; Field Civ. C. Sec. 1018; re-en. Sec. 7778, R.C.M. 1935; R.C.M. 1947, 41-211.

Cross-References

"Employment" defined, 39-2-101.

39-2-103. Confidential employment. The obligations peculiar to confidential employments are defined in the laws relating to trusts and fiduciary relationships.

History: En. Sec. 2687, Civ. C. 1895; re-en. Sec. 5270, Rev. C. 1907; re-en. Sec. 7785, R.C.M. 1921; Cal. Civ. C. Sec. 1992; Field Civ. C. Sec. 1025; re-en. Sec. 7785, R.C.M. 1935; R.C.M. 1947, 41-218; amd. Sec. 3, Ch. 397, L. 1979.

Cross-References

Trust code, Title 72, ch. 33 through 36.

Part 2
General Obligations of Employers

Part Cross-References

Hazardous chemicals in the workplace, Title 50, ch. 78.

39-2-201. Seats for employees. (1) Every employer in any manufacturing, mechanical, or mercantile establishment; laundry, hotel, or restaurant; or other establishment employing any person shall provide suitable seats for all employees and shall permit them to use such seats when they are not employed in the active duties of their employment.

(2) Any employer who shall fail, neglect, or refuse to provide suitable seats, as provided in this section, or who shall permit or suffer any overseer, superintendent, or other agent of any such employer to violate any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined for each offense not less than $50 or more than $200 or be imprisoned in the county jail for a period of not less than 10 or more than 60 days or both such fine and imprisonment.

History: (1)En. Sec. 2, Ch. 108, L. 1913; amd. Sec. 2, Ch. 18, L. 1917; re-en. Sec. 2, Ch. 70, L. 1917; re-en. Sec. 3077, R.C.M. 1921; re-en. Sec. 3077, R.C.M. 1935; amd. Sec. 22, Ch. 535, L. 1975; Sec. 41-1119, R.C.M. 1947; (2)En. Sec. 3, Ch. 108, L. 1913; amd. Sec. 3, Ch. 18, L. 1917; re-en. Sec. 3, Ch. 70, L. 1917; re-en. Sec. 3078, R.C.M. 1921; re-en. Sec. 3078, R.C.M. 1935; amd. Sec. 1, Ch. 51, L. 1971; Sec. 41-1120, R.C.M. 1947; R.C.M. 1947, 41-1119, 41-1120.

Cross-References

"Employment" defined, 39-2-101.

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Part 3
General Prohibitions on Employers

Part Cross-References

Employer may not discharge, discipline, or refuse to hire a person because of imposition of income withholding, 40-5-422.

39-2-301. Unlawful for employer to require employee to pay cost of medical examination as condition of employment. (1) It shall be unlawful for any employer to require any employee or applicant for employment to pay the cost of a medical examination or the cost of furnishing any records of such examination as a condition of employment.

(2) The term "employer", as used in this section, shall mean and include an individual, a partnership, an association, a corporation, a legal representative, trustee, receiver, trustee in bankruptcy, and any common carrier by rail, motor, water, air, or express company doing business in or operating within the state.

(3) The term "employee", as used in this section, shall mean and include any person who may be permitted, required, or directed by any employer, as defined in subsection (2) of this section, in consideration of direct or indirect gain or profit to engage in any employment.

(4) Any employer violating the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in any sum not exceeding $100 for each such offense.

History: En. Secs. 1, 2, 3, 4, Ch. 47, L. 1953; R.C.M. 1947, 41-113, 41-114, 41-115, 41-116.

Cross-References

"Employment" defined, 39-2-101.

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

39-2-302. Discharge or layoff of employee because of attachment or garnishment prohibited. No employer shall discharge or lay off an employee because of attachment or garnishment served on the employer against the wages of the employee.

History: En. Sec. 1, Ch. 245, L. 1969; R.C.M. 1947, 41-305.1.

Cross-References

Partial exemption of wages from execution, 25-13-614.

39-2-303. Deception as to character of employment, conditions of work, or existence of labor dispute prohibited. (1) No one doing business in this state shall induce, influence, persuade, or engage workmen to change from one place to another in this state through or by means of deception, misrepresentation, or false advertising concerning the kind or character of the work, the sanitary or other conditions of employment, or as to the existence of a strike or other trouble pending between the employer and the employees at the time of or immediately prior to such engagement. Failure to state in any advertisement, proposal, or contract for the employment of workmen that there is a strike, lockout, or other labor trouble at the place of the proposed employment when in fact such strike, lockout, or other trouble then actually exists at such place shall be deemed a false advertisement and misrepresentation for the purpose of this section.

(2) Any workman influenced, induced, persuaded, or engaged through or by means of any of the things prohibited by subsection (1) of this section has a right of action for recovery of all damages that he had sustained in consequence of the deception, misrepresentation, or false advertising used to induce him to change his place of employment against anyone directly or indirectly procuring such change, and in addition thereto, he shall recover reasonable attorneys' fees to be fixed by the court and taxed as costs in any judgment recovered.

History: En. 41-118 by Sec. 2, Ch. 513, L. 1973; R.C.M. 1947, 41-118.

Cross-References

Attorneys' fees, Title 25, ch. 10, part 3.

"Employment" defined, 39-2-101.

39-2-304. Lie detector tests prohibited — regulation of blood and urine testing. (1) A person, firm, corporation, or other business entity or representative thereof may not require:

(a) as a condition for employment or continuation of employment, any person to take a polygraph test or any form of a mechanical lie detector test;

(b) as a condition for employment, any person to submit to a blood or urine test, except for employment in:

(i) hazardous work environments;

(ii) jobs the primary responsibility of which is security, public safety, or fiduciary responsibility; or

(iii) jobs involving the intrastate commercial transportation of persons or commodities by a commercial motor carrier or an employee subject to driver qualification requirements; and

(c) as a condition for continuation of employment, any employee to submit to a blood or urine test unless the employer has reason to believe that the employee's faculties are impaired on the job as a result of alcohol consumption or illegal drug use, except that drug testing may be conducted at an employee's regular biennial physical for employment in jobs involving the intrastate commercial motor carrier transportation of persons or commodities.

(2) Prior to the administration of a drug or alcohol test, the person, firm, corporation, or other business entity or its representative shall adopt the written testing procedure that is provided in 49 CFR, part 40, and make it available to all persons subject to testing.

(3) The person, firm, corporation, or other business entity or its representative shall provide a copy of drug or alcohol test results to the person tested and provide him the opportunity, at the expense of the person requiring the test, to obtain a confirmatory test of the blood or urine by an independent laboratory selected by the person tested. The person tested must be given the opportunity to rebut or explain the results of either test or both tests.

(4) Adverse action may not be taken against a person tested under subsections (1)(b), (1)(c), (2), and (3) if the person tested presents a reasonable explanation or medical opinion indicating that the results of the test were not caused by alcohol consumption or illegal drug use.

(5) A person who violates this section is guilty of a misdemeanor.

(6) As used in this section:

(a) "commercial motor carrier" has the meaning provided in 69-12-101; and

(b) "intrastate" means commerce or trade that is begun, carried on, and completed wholly in this state.

History: En. Secs. 1, 2, Ch. 46, L. 1974; R.C.M. 1947, 41-119, 41-120; amd. Sec. 1, Ch. 482, L. 1987; amd. Sec. 1, Ch. 477, L. 1991.

Cross-References

Right to equal protection of the laws, Art. II, sec. 4, Mont. Const.

Licensing and regulation of polygraph examiners, Title 37, ch. 62.

"Employment" defined, 39-2-101.

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Penalty for misdemeanor, 46-18-212.

39-2-305. Employment of aliens not lawfully authorized to accept employment prohibited. (1) No employer may knowingly employ an alien who is not lawfully authorized to accept employment.

(2) A person convicted of violating this section shall be fined no more than $300.

(3) The department of labor and industry or a person harmed by a violation of this section may sue to enjoin an employer from violating this section and to gain other appropriate relief.

History: En. 41-121 by Sec. 1, Ch. 56, L. 1977; R.C.M. 1947, 41-121.

Cross-References

Injunctions, Title 27, ch. 19.

"Employment" defined, 39-2-101.

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

39-2-306. Employment of persons under eighteen as bartenders prohibited. (1) No person under 18 years of age shall be employed as a bartender, waiter, or waitress whose duty is to serve customers purchasing liquors, beer, or wines in any establishment which sells liquors, beer, or wines at retail.

(2) Any retail vendor of liquors, beer, or wines who employs any such person under the age of 18 years is guilty of a misdemeanor.

History: (1)En. Sec. 1, Ch. 114, L. 1941; amd. Sec. 11, Ch. 240, L. 1971; amd. Sec. 17, Ch. 94, L. 1973; Sec. 41-1135, R.C.M. 1947; (2)En. Sec. 2, Ch. 114, L. 1941; amd. Sec. 12, Ch. 240, L. 1971; amd. Sec. 18, Ch. 94, L. 1973; Sec. 41-1136, R.C.M. 1947; R.C.M. 1947, 41-1135, 41-1136.

Cross-References

Age of majority, Art. II, sec. 14, Mont. Const.

Alcoholic beverages — age restrictions, 16-3-301, 16-6-305.

"Employment" defined, 39-2-101.

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Penalty for misdemeanor, 46-18-212.

39-2-307 through 39-2-312 reserved.

39-2-313. Discrimination prohibited for use of lawful product during nonworking hours — exceptions. (1) For purposes of this section, "lawful product" means a product that is legally consumed, used, or enjoyed and includes food, beverages, and tobacco.

(2) Except as provided in subsections (3) and (4), an employer may not refuse to employ or license and may not discriminate against an individual with respect to compensation, promotion, or the terms, conditions, or privileges of employment because the individual legally uses a lawful product off the employer's premises during nonworking hours.

(3) Subsection (2) does not apply to:

(a) use of a lawful product that:

(i) affects in any manner an individual's ability to perform job-related employment responsibilities or the safety of other employees; or

(ii) conflicts with a bona fide occupational qualification that is reasonably related to the individual's employment;

(b) an individual who, on a personal basis, has a professional service contract with an employer and the unique nature of the services provided authorizes the employer, as part of the service contract, to limit the use of certain products; or

(c) an employer that is a nonprofit organization that, as one of its primary purposes or objectives, discourages the use of one or more lawful products by the general public.

(4) An employer does not violate this section if the employer takes action based on the belief that the employer's actions are permissible under an established substance abuse or alcohol program or policy, professional contract, or collective bargaining agreement.

(5) An employer may offer, impose, or have in effect a health, disability, or life insurance policy that makes distinctions between employees for the type or price of coverage based on the employees' use of a product if:

(a) differential rates assessed against employees reflect actuarially justified differences in providing employee benefits;

(b) the employer provides an employee with written notice delineating the differential rates used by the employer's insurance carriers; and

(c) the distinctions in the type or price of coverage is not used to expand, limit, or curtail the rights or liabilities of a party in a civil cause of action.

History: **En. Sec. 1, Ch. 193, L. 1993.**

39-2-314. Civil action limitation. (1) Except as provided in subsection (2), an individual who is discharged, discriminated against, or denied employment in violation of 39-2-313 may file a civil action against an employer within 1 year of the alleged violation and the court may require any reasonable measure to correct the discriminatory practice and to rectify the harm, pecuniary or otherwise, to the person discriminated against and may allow reasonable attorney fees to the prevailing party.

(2) Prior to filing a civil action under subsection (1), an employee shall, within 120 days of the alleged violation, initiate any internal grievance procedure available. If a grievance procedure is not exhausted within 120 days, the employee may file a civil action.

History: **En. Sec. 2, Ch. 193, L. 1993.**

Part 4

General Obligations of Employees

39-2-401. Duties of gratuitous employee. (1) One who without consideration undertakes to do a service for another is not bound to perform the same, but if he actually enters upon its performance, he must use at least slight care and diligence therein.

(2) One who by his own special request induces another to entrust him with the performance of a service must perform the same fully. In other cases, one who undertakes a gratuitous service may relinquish it at any time.

(3) A gratuitous employee who accepts a written power of attorney must act under it so long as it remains in force or until he gives notice to his employer that he will not do so.

History: **(1)En. Sec. 2670, Civ. C. 1895; re-en. Sec. 5253, Rev. C. 1907; re-en. Sec. 7768, R.C.M. 1921; Cal. Civ. C. Sec. 1975; Field Civ. C. Sec. 1008; re-en. Sec. 7768, R.C.M. 1935; Sec. 41-201, R.C.M. 1947; (2)En. Sec. 2671, Civ. C. 1895; re-en. Sec. 5254, Rev. C. 1907; re-en. Sec. 7769, R.C.M. 1921; Cal. Civ. C. Sec. 1976; Field Civ. C. Sec. 1009; re-en. Sec. 7769, R.C.M. 1935; Sec. 41-202, R.C.M. 1947; (3)En. Sec. 2672, Civ. C. 1895; re-en. Sec. 5255, Rev. C. 1907; re-en. Sec. 7770, R.C.M. 1921; Cal. Civ. C. Sec. 1977; Field Civ. C. Sec. 1010; re-en. Sec. 7770, R.C.M. 1935; Sec. 41-203, R.C.M. 1947; R.C.M. 1947, 41-201, 41-202, 41-203.**

Cross-References

"Good Samaritan" law — accidents, 27-1-714.

"Good Samaritan" law — food donations, 27-1-716.

Revocation of power of attorney, 72-5-502.

39-2-402. Duties of employee for reward. One who for a good consideration agrees to serve another must perform the service and must use ordinary care and diligence therein so long as he is thus employed.

History: **En. Sec. 2673, Civ. C. 1895; re-en. Sec. 5256, Rev. C. 1907; re-en. Sec. 7771, R.C.M. 1921; Cal. Civ. C. Sec. 1978; Field Civ. C. Sec. 1011; re-en. Sec. 7771, R.C.M. 1935; R.C.M. 1947, 41-204.**

39-2-403. Duties of employee for his own benefit. One who is employed at his own request to do that which is more for his own advantage than for that of his employer must use great care and diligence therein to protect the interest of the latter.

History: En. Sec. 2674, Civ. C. 1895; re-en. Sec. 5257, Rev. C. 1907; re-en. Sec. 7772, R.C.M. 1921; Cal. Civ. C. Sec. 1979; Field Civ. C. Sec. 1012; re-en. Sec. 7772, R.C.M. 1935; R.C.M. 1947, 41-205.

39-2-404. Employee must obey employer. An employee must substantially comply with all the directions of his employer concerning the service on which he is engaged, except where such obedience is impossible or unlawful or would impose new and unreasonable burdens upon the employee.

History: En. Sec. 2676, Civ. C. 1895; re-en. Sec. 5259, Rev. C. 1907; re-en. Sec. 7774, R.C.M. 1921; Cal. Civ. C. Sec. 1981; Based on Field Civ. C. Sec. 1014; re-en. Sec. 7774, R.C.M. 1935; R.C.M. 1947, 41-207.

Cross-References

Termination of employment by employer, 39-2-503.

39-2-405. Employee must conform to usage. An employee must perform his service in conformity to the usage of the place of performance unless otherwise directed by his employer or unless it is impracticable or manifestly injurious to his employer to do so.

History: En. Sec. 2677, Civ. C. 1895; re-en. Sec. 5260, Rev. C. 1907; re-en. Sec. 7775, R.C.M. 1921; Cal. Civ. C. Sec. 1982; Field Civ. C. Sec. 1015; re-en. Sec. 7775, R.C.M. 1935; R.C.M. 1947, 41-208.

39-2-406. Degree of skill required. (1) An employee is bound to exercise a reasonable degree of skill unless his employer has notice before employing him of his want of skill.

(2) An employee is always bound to use such skill as he possesses, so far as the same is required, for the service specified.

History: (1)En. Sec. 2678, Civ. C. 1895; re-en. Sec. 5261, Rev. C. 1907; re-en. Sec. 7776, R.C.M. 1921; Cal. Civ. C. Sec. 1983; Field Civ. C. Sec. 1016; re-en. Sec. 7776, R.C.M. 1935; Sec. 41-209, R.C.M. 1947; (2)En. Sec. 2679, Civ. C. 1895; re-en. Sec. 5262, Rev. C. 1907; re-en. Sec. 7777, R.C.M. 1921; Cal. Civ. C. Sec. 1984; Based on Field Civ. C. Sec. 1017; re-en. Sec. 7777, R.C.M. 1935; Sec. 41-210, R.C.M. 1947; R.C.M. 1947, 41-209, 41-210.

39-2-407. Duty to account. An employee must, on demand, render to his employer as often as may be reasonable just accounts of all his transactions in the course of his service and must, without demand, give prompt notice to his employer of everything which he receives for his account.

History: En. Sec. 2681, Civ. C. 1895; re-en. Sec. 5264, Rev. C. 1907; re-en. Sec. 7779, R.C.M. 1921; Cal. Civ. C. Sec. 1986; Field Civ. C. Sec. 1019; re-en. Sec. 7779, R.C.M. 1935; R.C.M. 1947, 41-212.

39-2-408. Duty of employee regarding items received on account of his employer. An employee who receives anything on account of his employer in any capacity other than that of a mere servant is not bound to deliver it to him until demanded and is not at liberty to send it to him from a distance, without demand, in any mode involving greater risk than its retention by the employee himself.

History: En. Sec. 2682, Civ. C. 1895; re-en. Sec. 5265, Rev. C. 1907; re-en. Sec. 7780, R.C.M. 1921; Cal. Civ. C. Sec. 1987; Field Civ. C. Sec. 1020; re-en. Sec. 7780, R.C.M. 1935; R.C.M. 1947, 41-213.

Cross-References

"Servant" defined, 39-2-601.

39-2-409. Preference to be given to employer's business. An employee who has any business to transact on his own account similar to that entrusted to him by his employer must always give the latter the preference.

History: En. Sec. 2683, Civ. C. 1985; re-en. Sec. 5266, Rev. C. 1907; re-en. Sec. 7781, R.C.M. 1921; Cal. Civ. C. Sec. 1988; Based on Field Civ. C. Sec. 1021; re-en. Sec. 7781, R.C.M. 1935; R.C.M. 1947, 41-214.

39-2-410. Responsibility of employee for substitute. An employee who is expressly authorized to employ a substitute is liable to his principal only for want of ordinary care in his selection. The substitute is directly responsible to the principal.

History: En. Sec. 2684, Civ. C. 1895; re-en. Sec. 5267, Rev. C. 1907; re-en. Sec. 7782, R.C.M. 1921; Cal. Civ. C. Sec. 1989; Field Civ. C. Sec. 1022; re-en. Sec. 7782, R.C.M. 1935; R.C.M. 1947, 41-215.

39-2-411. Surviving employee. Where service is to be rendered by two or more persons jointly and one of them dies, the survivor must act alone if the service to be rendered is such as he can rightly perform without the aid of the deceased person, but not otherwise.

History: En. Sec. 2686, Civ. C. 1895; re-en. Sec. 5269, Rev. C. 1907; re-en. Sec. 7784, R.C.M. 1921; Cal. Civ. C. Sec. 1991; Field Civ. C. Sec. 1024; re-en. Sec. 7784, R.C.M. 1935; R.C.M. 1947, 41-217.

Part 5

Termination of Employment

Part Cross-References

Wrongful Discharge From Employment Act, Title 39, ch. 2, part 9.

39-2-501. Termination of employment generally. Every employment is terminated by:

(1) the expiration of its appointed term;
(2) the extinction of its subject;
(3) the death of the employee; or
(4) his legal incapacity to act as such.

History: En. Sec. 2701, Civ. C. 1895; re-en. Sec. 5272, Rev. C. 1907; re-en. Sec. 7787, R.C.M. 1921; Cal. Civ. C. Sec. 1997; Field Civ. C. Sec. 1027; re-en. Sec. 7787, R.C.M. 1935; R.C.M. 1947, 41-302.

Cross-References

Contract not enforceable against employee beyond 2 years, 28-2-722.

"Employment" defined, 39-2-101.

39-2-502. Termination by death or incapacity of employer. (1) Every employment in which the power of the employee is not coupled with an interest in its subject is terminated by notice to him of:

(a) the death of the employer; or
(b) his legal incapacity to contract.

(2) An employee, unless the term of his service has expired or unless he has a right to discontinue it at any time without notice, must continue his service after notice of the death or incapacity of his employer, so far as is necessary to protect from serious injury the interests of the employer's successor in interest, until a reasonable time after notice of the facts has been communicated to such successor. The successor must compensate the

employee for such service according to the terms of the contract of employment.

History: (1)En. Sec. 2700, Civ. C. 1895; re-en. Sec. 5271, Rev. C. 1907; re-en. Sec. 7786, R.C.M. 1921; Cal. Civ. C. Sec. 1996; Field Civ. C. Sec. 1026; re-en. Sec. 7786, R.C.M. 1935; Sec. 41-301, R.C.M. 1947; (2)En. Sec. 2702, Civ. C. 1895; re-en. Sec. 5273, Rev. C. 1907; re-en. Sec. 7788, R.C.M. 1921; Cal. Civ. C. Sec. 1998; Field Civ. C. Sec. 1028; re-en. Sec. 7788, R.C.M. 1935; Sec. 41-303, R.C.M. 1947; R.C.M. 1947, 41-301, 41-303.

Cross-References

"Employment" defined, 39-2-101.

39-2-503. Termination at will. An employment having no specified term may be terminated at the will of either party on notice to the other, except where otherwise provided by this chapter, 28-10-301 through 28-10-303, 28-10-502, 30-11-601 through 30-11-605, and 39-2-302.

History: En. Sec. 2703, Civ. C. 1895; re-en. Sec. 5274, Rev. C. 1907; re-en. Sec. 7789, R.C.M. 1921; Cal. Civ. C. Sec. 1999; Field Civ. C. Sec. 1029; re-en. Sec. 7789, R.C.M. 1935; amd. Sec. 2, Ch. 245, L. 1969; R.C.M. 1947, 41-304; amd. Sec. 4, Ch. 397, L. 1979.

Cross-References

"Employment" defined, 39-2-101.

Employee's right to disobey impossible, unlawful, or unreasonable commands, 39-2-404.

39-2-504. Repealed. Sec. 10, Ch. 641, L. 1987.

History: En. Sec. 2704, Civ. C. 1895; re-en. Sec. 5275, Rev. C. 1907; re-en. Sec. 7790, R.C.M. 1921; Cal. Civ. C. Sec. 2000; Field Civ. C. Sec. 1030; re-en. Sec. 7790, R.C.M. 1935; R.C.M. 1947, 41-305.

39-2-505. Repealed. Sec. 10, Ch. 641, L. 1987.

History: En. Sec. 2705, Civ. C. 1895; re-en. Sec. 5276, Rev. C. 1907; re-en. Sec. 7791, R.C.M. 1921; Cal. Civ. C. Sec. 2001; Based on Field Civ. C. Sec. 1031; re-en. Sec. 7791, R.C.M. 1935; R.C.M. 1947, 41-306.

Part 6

Master and Servant

39-2-601. Servant defined. A servant is one who is employed to render personal service to his employer otherwise than in the pursuit of an independent calling and who in such service remains entirely under the control and direction of the latter, who is called his master.

History: En. Sec. 2720, Civ. C. 1895; re-en. Sec. 5279, Rev. C. 1907; re-en. Sec. 7794, R.C.M. 1921; Cal. Civ. C. Sec. 2009; Field Civ. C. Sec. 1034; re-en. Sec. 7794, R.C.M. 1395; R.C.M. 1947, 41-401.

39-2-602. Term of hiring. (1) A servant is presumed to have been hired for such length of time as the parties adopt for the estimation of wages. A hiring at a yearly rate is presumed to be for 1 year; a hiring at a daily rate, for 1 day; a hiring by piecework, for no specified term.

(2) In the absence of any agreement or custom as to the term of service, the time of payment, or rate or value of wages, a servant is presumed to be hired by the month at a monthly rate of reasonable wages, to be paid when the service is performed.

History: (1)En. Sec. 2721, Civ. C. 1895; re-en. Sec. 5280, Rev. C. 1907; re-en. Sec. 7795, R.C.M. 1921; Cal. Civ. C. Sec. 2010; Field Civ. C. Sec. 1035; re-en. Sec. 7795, R.C.M. 1935; Sec. 41-402, R.C.M. 1947; (2)En. Sec. 2722, Civ. C. 1895; re-en. Sec. 5281, Rev. C. 1907; re-en. Sec. 7796, R.C.M. 1921; Cal. Civ. C. Sec. 2011; Based on Field Civ. C. Sec. 1036; re-en. Sec. 7796, R.C.M. 1935; Sec. 41-403, R.C.M. 1947; R.C.M. 1947, 41-402, 41-403.

Cross-References

Contract not enforceable against employee beyond 2 years, 28-2-722.

"Servant" defined, 39-2-601.

39-2-603. Renewal of hiring. Where, after the expiration of an agreement respecting the wages and the term of service, the parties continue the relation of master and servant, they are presumed to have renewed the agreement for the same wages and term of service.

History: En. Sec. 2723, Civ. C. 1895; re-en. Sec. 5282, Rev. C. 1907; re-en. Sec. 7797, R.C.M. 1921; Cal. Civ. C. Sec. 2012; Field Civ. C. Sec. 1037; re-en. Sec. 7797, R.C.M. 1395; R.C.M. 1947, 41-404.

Cross-References

"Servant" defined, 39-2-601.

39-2-604. Time of service. The entire time of a domestic servant belongs to the master, and the time of other servants to such extent as is usual in the business in which they serve, not exceeding in any case 10 hours in the day.

History: En. Sec. 2724, Civ. C. 1895; re-en. Sec. 5283, Rev. C. 1907; re-en. Sec. 7798, R.C.M. 1921; Cal. Civ. C. Sec. 2013; Field Civ. C. Sec. 1038; re-en. Sec. 7798, R.C.M. 1935; R.C.M. 1947, 41-405.

Cross-References

Eight-hour day maximum, Art. XII, sec. 2, Mont. Const.

"Servant" defined, 39-2-601.

39-2-605. Servant to pay over without demand. A servant must deliver to his master without demand, as soon as with reasonable diligence he can find him, everything that he receives for his account, but he is not bound without orders from his master to send anything to him through another person.

History: En. Sec. 2725, Civ. C. 1895; re-en. Sec. 5284, Rev. C. 1907; re-en. Sec. 7799, R.C.M. 1921; Cal. Civ. C. Sec. 2014; Field Civ. C. Sec. 1039; re-en. Sec. 7799, R.C.M. 1935; R.C.M. 1947, 41-406.

Cross-References

"Servant" defined, 39-2-601.

39-2-606. When servant may be discharged. A master may discharge any servant, other than an apprentice, whether engaged for a fixed term or not:

(1) if he is guilty of misconduct in the course of his service or of gross immorality, though unconnected with the same; or

(2) if, being employed about the person of his master or in a confidential position, the master discovers that he has been guilty of misconduct before or after the commencement of his service of such a nature that, if the master had known or contemplated it, he would not have so employed him.

History: En. Sec. 2726, Civ. C. 1895; re-en. Sec. 5285, Rev. C. 1907; re-en. Sec. 7800, R.C.M. 1921; Cal. Civ. C. Sec. 2015; Field Civ. C. Sec. 1040; re-en. Sec. 7800, R.C.M. 1935; R.C.M. 1947, 41-407.

Cross-References

"Servant" defined, 39-2-601.

Apprenticeship, Title 39, ch. 6.

Part 7

General Liability Arising From Employment Relationship

Part Cross-References

Negligence and comparative negligence, 27-1-701, 27-1-702.

General duty of care, 28-1-201.

Indemnity, Title 28, ch. 11, part 3.

39-2-701. Indemnification of employee. (1) An employer must indemnify his employee, except as prescribed in subsection (2) of this section, for all that he necessarily expends or loses in direct consequence of the discharge of his duties as such or of his obedience to the directions of the employer, even though unlawful, unless the employee at the time of obeying such directions believed them to be unlawful.

(2) An employer is not bound to indemnify his employee for losses suffered by the latter in consequence of the ordinary risks of the business in which he is employed.

(3) An employer must in all cases indemnify his employee for losses caused by the former's want of ordinary care.

History: (1)En. Sec. 2660, Civ. C. 1895; re-en. Sec. 5242, Rev. C. 1907; re-en. Sec. 7757, R.C.M. 1921; Cal. Civ. C. Sec. 1969; Field Civ. C. Sec. 1005; re-en. Sec. 7757, R.C.M. 1935; Sec. 41-102, R.C.M. 1947; (2)En. Sec. 2661, Civ. C. 1895; re-en. Sec. 5243, Rev. C. 1907; re-en. Sec. 7758, R.C.M. 1921; Cal. Civ. C. Sec. 1970; Based on Field Civ. C. Sec. 1006; re-en. Sec. 7758, R.C.M. 1935; Sec. 41-103, R.C.M. 1947; (3)En. Sec. 2662, Civ. C. 1895; re-en. Sec. 5244, Rev. C. 1907; re-en. Sec. 7759, R.C.M. 1921; Cal. Civ. C. Sec. 1971; Field Civ. C. Sec. 1007; re-en. Sec. 7759, R.C.M. 1935; Sec. 41-104, R.C.M. 1947; R.C.M. 1947, 41-102, 41-103, 41-104.

39-2-702. Liability of employee for negligence. An employee who is guilty of a culpable degree of negligence is liable to his employer for the damage thereby caused to the latter, and the employer is liable to him for the value of such services only as are properly rendered if the service is not gratuitous.

History: En. Sec. 2685, Civ. C. 1895; re-en. Sec. 5268, Rev. C. 1907; re-en. Sec. 7783, R.C.M. 1921; Cal. Civ. C. Sec. 1990; Field Civ. C. Sec. 1023; re-en. Sec. 7783, R.C.M. 1935; R.C.M. 1947, 41-216.

Cross-References

Liability for negligent and willful acts, 27-1-701.

39-2-703. Liability of railway corporation for negligence of fellow servants. (1) Every person or corporation operating a railway or railroad in this state is liable for all damages sustained by any employee of such person or corporation in consequence of the neglect of any other employee thereof or by the mismanagement of any other employee thereof and in consequence of the willful wrongs, whether of commission or omission, of any other employee thereof when such neglect, mismanagement, or wrongs are in any manner connected with the use and operation of any railway or railroad on or about which he is employed. No contract which restricts such liability is legal or binding.

(2) In case of the death of any such employee in consequence of any injury or damage so sustained, the right of action provided by subsection (1) shall

survive and may be prosecuted and maintained by his heirs or personal representatives.

(3) Every railway corporation doing business in this state, including electric railway corporations, is liable for damages sustained by an employee thereof within this state, subject to the provisions of 27-1-702, when such damages are caused by the negligence of any train dispatcher, telegraph operator, superintendent, master mechanic, yardmaster, conductor, engineer, motorman, or any other employee who has superintendence of any stationary or hand signal.

(4) No contract of insurance, relief, benefit, or indemnity in case of injury or death or any other contract entered into, either before or after the injury, between the person injured and any of the employers named in subsection (3) is a bar or defense to any cause of action brought under the provisions of this section, except as otherwise provided in the Workers' Compensation Act.

History: (1), (2)En. Secs. 1, 2, Ch. 1, L. 1905; re-en. Secs. 5251, 5252, Rev. C. 1907; re-en. Secs. 7766, 7767, R.C.M. 1921; re-en. Secs. 7766, 7767, R.C.M. 1935; Secs. 41-111, 41-112, R.C.M. 1947; (3), (4)En. Secs. 1, 3, Ch. 83, L. 1903; re-en. Secs. 5245, 5247, Rev. C. 1907; re-en. Secs. 7760, 7762, R.C.M. 1921; re-en. Secs. 7760, 7762, R.C.M. 1935; Secs. 41-105, 41-107, R.C.M. 1947; R.C.M 1947, 41-105, 41-107, 41-111, 41-112; amd. Sec. 5, Ch. 397, L. 1979.

Cross-References

Invalidity of contracts that violate law, 28-2-702.

Workers' Compensation Act, Title 39, ch. 71.

Liability for death or injury to railroad employees, 69-14-1006.

39-2-704. Liability of mining company for negligence of fellow servants. (1) Every company, corporation, or individual operating any mine, smelter, or mill for the refining of ores is liable for damages sustained by any employee thereof within this state, subject to the provisions of 27-1-702, when such damage is caused by the negligence of any superintendent, foreman, shift boss, hoisting or other engineer, or craneman.

(2) No contract of insurance, relief, benefit, or indemnity in case of injury or death or any other contract entered into before the injury between the person injured and any of the employers named in this section is a bar or defense to any cause of action brought under the provisions of this section, except as otherwise provided in the Workers' Compensation Act.

(3) In case of the death of any such employee in consequence of any injury or damages so sustained, the right of action survives and may be prosecuted and maintained by his heirs or personal representatives.

History: En. Secs. 1, 2, 3, Ch. 23, L. 1905; re-en. Secs. 5248, 5249, 5250, Rev. C. 1907; re-en. Secs. 7763, 7764, 7765, R.C.M. 1921; re-en. Secs. 7763, 7764, 7765, R.C.M. 1935; R.C.M. 1947, 41-108, 41-109, 41-110; amd. Sec. 6, Ch. 397, L. 1979.

39-2-705. Contract discharging employer liability for negligence void. Any contract or agreement entered into by any person, company, or corporation with its servants or employees whereby such person, company, or corporation shall be released or discharged from liability or responsibility on account of personal injuries received by such servants or employees while in the service of such person, company, or corporation, by reason of the negligence of such person, company, or corporation, or the agents or employees thereof, shall be absolutely null and void.

History: En. Sec. 2242, Civ. C. 1895; re-en. Sec. 5053, Rev. C. 1907; re-en. Sec. 7555, R.C.M. 1921; re-en. Sec. 7555, R.C.M. 1935; R.C.M. 1947, 13-803.

Cross-References
Contracts against the policy of the law, 28-2-702.

Part 8

Blacklisting and Protection of Discharged Employees

39-2-801. Employee to be furnished on demand with reason for discharge. It is the duty of any person after having discharged any employee from his service, upon demand by such discharged employee, to furnish him in writing a full, succinct, and complete statement of the reason of his discharge and if such person refuses so to do within a reasonable time after such demand, it is unlawful thereafter for such person to furnish any statement of the reason of such discharge to any person or in any way to blacklist or to prevent such discharged person from procuring employment elsewhere, subject to the penalties and damages prescribed in this part.

History: En. Sec. 3, p. 258, L. 1891; amd. Sec. 3392, Pol. C. 1895; re-en. Sec. 1757, Rev. C. 1907; re-en. Sec. 3094, R.C.M. 1921; re-en. Sec. 3094, R.C.M. 1935; R.C.M. 1947, 41-1311.

Cross-References
"Employment" defined, 39-2-101.

39-2-802. Protection of discharged employees. If any person, after having discharged an employee from his service, prevents or attempts to prevent by word or writing of any kind such discharged employee from obtaining employment with any other person, such person is punishable as provided in 39-2-804 and is liable in punitive damages to such discharged person, to be recovered by civil action. No person is prohibited from informing by word or writing any person to whom such discharged person or employee has applied for employment a truthful statement of the reason for such discharge.

History: En. Sec. 1, p. 257, L. 1891; amd. Sec. 3390, Pol. C. 1895; re-en. Sec. 1755, Rev. C. 1907; re-en. Sec. 3092, R.C.M. 1921; re-en. Sec. 3092, R.C.M. 1935; R.C.M. 1947, 41-1309.

Cross-References
"Employment" defined, 39-2-101.

39-2-803. Blacklisting prohibited. If any company or corporation in this state authorizes or allows any of its agents to blacklist or any person does blacklist any discharged employee or attempts by word or writing or any other means whatever to prevent any discharged employee or any employee who may have voluntarily left the company's service from obtaining employment with another person, except as provided for in 39-2-802, such company or corporation or person is liable in punitive damages to such employee so prevented from obtaining employment, to be recovered by him in a civil action, and is also punishable as provided in 39-2-804.

History: En. Sec. 2, p. 258, L. 1891; amd. Sec. 3391, Pol. C. 1895; re-en. Sec. 1756, Rev. C. 1907; re-en. Sec. 3093, R.C.M. 1921; re-en. Sec. 3093, R.C.M. 1935; R.C.M. 1947, 41-1310; amd. Sec. 7, Ch. 397, L. 1979.

Cross-References
Punitive damages, 27-1-220, 27-1-221.
"Employment" defined, 39-2-101.

39-2-804. Violation of part a misdemeanor. Every person who violates any of the provisions of this part relating to the protection of discharged employees and the prevention of blacklisting is guilty of a misdemeanor.

History: En. Sec. 656, Pen. C. 1895; re-en. Sec. 8467, Rev. C. 1907; re-en. Sec. 11219, R.C.M. 1921; re-en. Sec. 11219, R.C.M. 1935; Sec. 94-3555, R.C.M. 1947; redes. 41-1325 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 41-1325.

Cross-References

Classification of offenses, 45-1-201.
"Misdemeanor" defined, 45-2-101.
Penalty for misdemeanor, 46-18-212.

Part 9

Wrongful Discharge From Employment

39-2-901. Short title. This part may be cited as the "Wrongful Discharge From Employment Act".

History: En. Sec. 1, Ch. 641, L. 1987.

39-2-902. Purpose. This part sets forth certain rights and remedies with respect to wrongful discharge. Except as limited in this part, employment having no specified term may be terminated at the will of either the employer or the employee on notice to the other for any reason considered sufficient by the terminating party. Except as provided in 39-2-912, this part provides the exclusive remedy for a wrongful discharge from employment.

History: En. Sec. 2, Ch. 641, L. 1987.

39-2-903. Definitions. In this part, the following definitions apply:

(1) "Constructive discharge" means the voluntary termination of employment by an employee because of a situation created by an act or omission of the employer which an objective, reasonable person would find so intolerable that voluntary termination is the only reasonable alternative. Constructive discharge does not mean voluntary termination because of an employer's refusal to promote the employee or improve wages, responsibilities, or other terms and conditions of employment.

(2) "Discharge" includes a constructive discharge as defined in subsection (1) and any other termination of employment, including resignation, elimination of the job, layoff for lack of work, failure to recall or rehire, and any other cutback in the number of employees for a legitimate business reason.

(3) "Employee" means a person who works for another for hire. The term does not include a person who is an independent contractor.

(4) "Fringe benefits" means the value of any employer-paid vacation leave, sick leave, medical insurance plan, disability insurance plan, life insurance plan, and pension benefit plan in force on the date of the termination.

(5) "Good cause" means reasonable job-related grounds for dismissal based on a failure to satisfactorily perform job duties, disruption of the employer's operation, or other legitimate business reason. The legal use of a lawful product by an individual off the employer's premises during nonworking hours is not a legitimate business reason, unless the employer acts within the provisions of 39-2-313(3) or (4).

(6) "Lost wages" means the gross amount of wages that would have been reported to the internal revenue service as gross income on Form W-2 and includes additional compensation deferred at the option of the employee.

(7) "Public policy" means a policy in effect at the time of the discharge concerning the public health, safety, or welfare established by constitutional provision, statute, or administrative rule.

History: En. Sec. 3, Ch. 641, L. 1987; amd. Sec. 3, Ch. 193, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 193 in definition of good cause inserted second sentence pertaining to the legal use of a lawful product off the employer's premises during nonworking hours.

39-2-904. Elements of wrongful discharge. A discharge is wrongful only if:

(1) it was in retaliation for the employee's refusal to violate public policy or for reporting a violation of public policy;

(2) the discharge was not for good cause and the employee had completed the employer's probationary period of employment; or

(3) the employer violated the express provisions of its own written personnel policy.

History: En. Sec. 4, Ch. 641, L. 1987.

39-2-905. Remedies. (1) If an employer has committed a wrongful discharge, the employee may be awarded lost wages and fringe benefits for a period not to exceed 4 years from the date of discharge, together with interest thereon. Interim earnings, including amounts the employee could have earned with reasonable diligence, must be deducted from the amount awarded for lost wages. Before interim earnings are deducted from lost wages, there must be deducted from the interim earnings any reasonable amounts expended by the employee in searching for, obtaining, or relocating to new employment.

(2) The employee may recover punitive damages otherwise allowed by law if it is established by clear and convincing evidence that the employer engaged in actual fraud or actual malice in the discharge of the employee in violation of 39-2-904(1).

(3) There is no right under any legal theory to damages for wrongful discharge under this part for pain and suffering, emotional distress, compensatory damages, punitive damages, or any other form of damages, except as provided for in subsections (1) and (2).

History: En. Sec. 5, Ch. 641, L. 1987; amd. Sec. 1, Ch. 442, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 442 inserted third sentence of (1) requiring deduction from interim earnings any reasonable amount expended regarding new employment prior to deduction of interim earnings from lost wages.

39-2-906 through 39-2-910 reserved.

39-2-911. Limitation of actions. (1) An action under this part must be filed within 1 year after the date of discharge.

(2) If an employer maintains written internal procedures, other than those specified in 39-2-912, under which an employee may appeal a discharge within the organizational structure of the employer, the employee shall first exhaust those procedures prior to filing an action under this part. The

employee's failure to initiate or exhaust available internal procedures is a defense to an action brought under this part. If the employer's internal procedures are not completed within 90 days from the date the employee initiates the internal procedures, the employee may file an action under this part and for purposes of this subsection the employer's internal procedures are considered exhausted. The limitation period in subsection (1) is tolled until the procedures are exhausted. In no case may the provisions of the employer's internal procedures extend the limitation period in subsection (1) more than 120 days.

(3) If the employer maintains written internal procedures under which an employee may appeal a discharge within the organizational structure of the employer, the employer shall within 7 days of the date of the discharge notify the discharged employee of the existence of such procedures and shall supply the discharged employee with a copy of them. If the employer fails to comply with this subsection, the discharged employee need not comply with subsection (2).

History: En. Sec. 6, Ch. 641, L. 1987.

39-2-912. Exemptions. This part does not apply to a discharge:

(1) that is subject to any other state or federal statute that provides a procedure or remedy for contesting the dispute. Such statutes include those that prohibit discharge for filing complaints, charges, or claims with administrative bodies or that prohibit unlawful discrimination based on race, national origin, sex, age, handicap, creed, religion, political belief, color, marital status, and other similar grounds.

(2) of an employee covered by a written collective bargaining agreement or a written contract of employment for a specific term.

History: En. Sec. 7, Ch. 641, L. 1987.

39-2-913. Preemption of common-law remedies. Except as provided in this part, no claim for discharge may arise from tort or express or implied contract.

History: En. Sec. 8, Ch. 641, L. 1987.

39-2-914. Arbitration. (1) A party may make a written offer to arbitrate a dispute that otherwise could be adjudicated under this part.

(2) An offer to arbitrate must be in writing and contain the following provisions:

(a) A neutral arbitrator must be selected by mutual agreement or, in the absence of agreement, as provided in 27-5-211.

(b) The arbitration must be governed by the Uniform Arbitration Act, Title 27, chapter 5. If there is a conflict between the Uniform Arbitration Act and this part, this part applies.

(c) The arbitrator is bound by this part.

(3) If a complaint is filed under this part, the offer to arbitrate must be made within 60 days after service of the complaint and must be accepted in writing within 30 days after the date the offer is made.

(4) A discharged employee who makes a valid offer to arbitrate that is accepted by the employer and who prevails in such arbitration is entitled to have the arbitrator's fee and all costs of arbitration paid by the employer.

(5) If a valid offer to arbitrate is made and accepted, arbitration is the exclusive remedy for the wrongful discharge dispute and there is no right to bring or continue a lawsuit under this part. The arbitrator's award is final and binding, subject to review of the arbitrator's decision under the provisions of the Uniform Arbitration Act.

History: En. Sec. 9, Ch. 641, L. 1987; amd. Sec. 2, Ch. 442, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 442 at beginning of (1) substituted "A party may make a written offer to arbitrate" for "Under a written agreement of the parties" and at end, after "part", deleted "may be resolved by final and binding arbitration as provided in this section"; and deleted former (4) that read: "(4) A party who makes a valid offer to arbitrate that is not accepted by the other party and who prevails in an action under this part is entitled as an element of costs to reasonable attorney fees incurred subsequent to the date of the offer."

39-2-915. Effect of rejection of offer to arbitrate. A party who makes a valid offer to arbitrate that is not accepted by the other party and who prevails in an action under this part is entitled as an element of costs to reasonable attorney fees incurred subsequent to the date of the offer.

History: En. Sec. 3, Ch. 442, L. 1993.

Part 10

Closure of or Layoff at Governmental Facility

39-2-1001. Purpose. The purpose of this part is to require the state of Montana to provide adequate notification when it plans the closure or retrenchment of a facility in a local area.

History: En. Sec. 1, Ch. 757, L. 1991.

39-2-1002. Definitions. As used in this part, the following definitions apply:

(1) "Closure" means the permanent shutting down of operations at a workplace.

(2) "Department" means the department of labor and industry.

(3) "Employer" means the state of Montana.

(4) "Governmental facility" means any institution, department, agency, bureau, or office operated by the state of Montana and employing more than 25 persons.

(5) "Retrenchment" means reducing the number of employees at the governmental facility by at least 250 employees over any 2-year period, provided that a reduction in the number of employees by attrition is not retrenchment.

History: En. Sec. 2, Ch. 757, L. 1991.

39-2-1003. Requirements for closure or retrenchment. Upon making a decision to close or retrench, an employer shall:

(1) immediately notify the employees, the affected employee organizations, the affected local governments, and a newspaper of general circulation in the county where the governmental facility subject to closure or retrenchment is located; and

(2) within 90 days, provide the employees, the affected employee organizations, and the affected local governments with a written impact statement that includes information concerning:

(a) the number of employees affected;
(b) the amount of the affected employees' payroll;
(c) the potential tax losses to local governments and school districts;
(d) the effect on other businesses; and
(e) the reasons for the closure or retrenchment.

History: En. Sec. 3, Ch. 757, L. 1991.

39-2-1004. Adoption of rules. The department shall adopt rules to provide procedures for an employer to meet the obligations under 39-2-1003.

History: En. Sec. 4, Ch. 757, L. 1991.

CHAPTER 3

WAGES AND WAGE PROTECTION

Part 1 — General Provisions

39-3-101. Employer to furnish itemized statement of deductions.
39-3-102. Compensation of employee dismissed for cause.
39-3-103. Compensation of employee leaving for cause.
39-3-104. Equal pay for women for equivalent service.

Part 2 — Payment of Wages

39-3-201. Definitions.
39-3-202. Rulemaking power of commissioner.
39-3-203. Employer to notify employee on written demand as to rate of wages and date of paydays.
39-3-204. Payment of wages generally.
39-3-205. Payment of wages when employee separated from employment prior to payday — exception.
39-3-206. Penalty for failure to pay wages at times specified in law.
39-3-207. Period within which employee may recover penalties.
39-3-208. Contracts in violation of part void.
39-3-209. Commissioner of labor to investigate violations and institute actions for unpaid wages.
39-3-210. Investigative powers of commissioner.
39-3-211. Commissioner to take wage assignments.
39-3-212. Court enforcement of administrative decision.
39-3-213. Disposition of wages.
39-3-214. Court costs and attorneys' fees.
39-3-215. Authority of county attorney.
39-3-216. Hearing.
39-3-217. Appeal to board.

Part 3 — Reciprocal Agreement for Collection of Wages Act

39-3-301. Short title.
39-3-302. Purpose.
39-3-303. Reciprocal agreements for collection of wages.
39-3-304. Actions in other states for collections of claims — assignments for collection.
39-3-305. Claims assigned by other states — actions — collection.
39-3-306. Limitations.

Part 4 — Minimum Wage and Overtime Compensation

39-3-401. Declaration of policy.
39-3-402. Definitions.
39-3-403. Regulations.
39-3-404. Minimum wage.
39-3-405. Overtime compensation.

39-3-406. Exclusions.
39-3-407. Enforcement.
39-3-408. Provisions cumulative.
39-3-409. Adoption of minimum wage rates — exception.
39-3-410. Repealed.

Part 5 — Wage Protection for Certain Employees of Mineral and Oil Industry

39-3-501. Certain laws extended to certain employers in mineral and oil industry.
39-3-502. Operator to file statement — penalty for failure to file.
39-3-503. Report of violations to county attorney by commissioner.
39-3-504. Report of violations directly to county attorney by employee.
39-3-505. County attorney to notify commissioner of violation reported directly by employee.
39-3-506. County attorney to file complaint in district court on belief of violation.
39-3-507. Prayer for relief.
39-3-508. Summons — service of process.
39-3-509. Hearing on complaint — court order to pay wages due or appear and show cause why bond should not be required.
39-3-510. Show-cause hearing — restraining order until bond furnished.
39-3-511. Bond requirements.
39-3-512. Enjoining further operations in event bond not filed.
39-3-513. Costs of proceeding.
39-3-514. Punishment of employer for contempt.
39-3-515. Publication of notice of court order.
39-3-516. Review of court order by supreme court.
39-3-517. Suit on bond.
39-3-518. Attorney's fee for suit on bond.
39-3-519. Clarification as to construction and applicability of part.
39-3-520. Remedy cumulative.

Part 6 — Restaurant, Bar, and Tavern Wage Protection Act

39-3-601. Short title.
39-3-602. Purpose.
39-3-603. Definitions.
39-3-604. Bond to be filed — bond requirements — payment — exception.
39-3-605. Waiver of bond — new or additional bond — exemption.
39-3-606. Power of commissioner to discharge existing sureties and require others.
39-3-607. Enjoining business until bond filed.
39-3-608. Unlawful to operate business without bond.

Part 7 — Contractors' Bonds for Wages and Benefits

39-3-701. Definitions.
39-3-702. Rules.
39-3-703. Contractor to furnish bond for wages and fringe benefits — bond requirements.
39-3-704. Exception.
39-3-705. Suit on bond.
39-3-706. Liability of person contracting with contractor for failure to require bond.

Part 1

General Provisions

39-3-101. Employer to furnish itemized statement of deductions. (1) All employers in this state when making payment to employees for salaries or wages shall, upon making such payment, give to the employee an itemized statement setting forth moneys deducted because of state and federal income taxes, social security, or any other deductions together with the amount of each deduction.

(2) Where no deduction is made in such payment of wages or salaries, the employer shall give to the employee a statement that the payment does not include any such deductions.

History: En. Sec. 1, Ch. 159, L. 1957; R.C.M. 1947, 41-117.

Cross-References

Child support income deductions and withholding, Title 40, ch. 5, parts 3 and 4.

39-3-102. Compensation of employee dismissed for cause. An employee dismissed by his employer for good cause is not entitled to any compensation for services rendered since the last day upon which a payment became due to him under the contract.

History: En. Sec. 2706, Civ. C. 1895; re-en. Sec. 5277, Rev. C. 1907; re-en. Sec. 7792, R.C.M. 1921; Cal. Civ. C. Sec. 2002; Field Civ. C. Sec. 1032; re-en. Sec. 7792, R.C.M. 1935; R.C.M. 1947, 41-307.

Cross-References

Dismissal by employer, 39-2-503.

39-3-103. Compensation of employee leaving for cause. An employee who quits the service of his employer for good cause is entitled to such proportion of the compensation which would become due in case of full performance as the services which he has already rendered bear to the services which he was to render as full performance.

History: En. Sec. 2707, Civ. C. 1895; re-en. Sec. 5278, Rev. C. 1907; re-en. Sec. 7793, R.C.M. 1921; Cal. Civ. C. Sec. 2003; Field Civ. C. Sec. 1033; re-en. Sec. 7793, R.C.M. 1935; R.C.M. 1947, 41-308.

Cross-References

Termination by employee, 39-2-503.

39-3-104. Equal pay for women for equivalent service. (1) It is unlawful for the state or any county, municipal entity, school district, public or private corporation, person, or firm to employ women in any occupation within the state for compensation less than that paid to men for equivalent service or for the same amount or class of work or labor in the same industry, school, establishment, office, or place of employment of any kind or description.

(2) If the state or any county, municipal entity, school district, public or private corporation, person, or firm violates any of the provisions of subsection (1), it is guilty of a misdemeanor and upon conviction thereof shall be fined not less than $25 or more than $500 for each offense.

History: En. Secs. 1, 2, Ch. 147, L. 1919; re-en. Secs. 3090, 3091, R.C.M. 1921; re-en. Secs. 3090, 3091, R.C.M. 1935; R.C.M. 1947, 41-1307, 41-1308; amd. Sec. 8, Ch. 397, L. 1979.

Cross-References

Individual dignity, Art. II, sec. 4, Mont. Const.

Equal pay for comparable worth jobs, 2-18-208, 2-18-209.

Women in employment, Title 39, ch. 7.

Illegal discrimination, Title 49, ch. 2.

Part 2

Payment of Wages

39-3-201. Definitions. The following are the definitions used for the purpose of this part:

(1) "Board" means the board of personnel appeals provided for in 2-15-1705.

(2) "Commissioner of labor" refers to the director, commissioner, or chief of the department of labor and industry as the department is defined by law, or any person or persons designated by him for the purpose of this part.

(3) "Department" means the department of labor and industry as provided for in 2-15-1701.

(4) "Employ" means permit or suffer to work.

(5) "Employee" includes any person who works for another for hire.

(6) "Employer" includes any individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons acting directly or indirectly in the interest of an employer in relation to an employee but shall not include the United States.

(7) "Wages" includes any money due an employee from the employer or employers, whether to be paid by the hour, day, week, semimonthly, monthly, or yearly and shall include bonus, piecework, tips, and gratuities of any kind.

History: En. Sec. 1, Ch. 11, L. 1919; re-en. Sec. 3084, R.C.M. 1921; re-en. Sec. 3084, R.C.M. 1935; amd. Sec. 1, Ch. 169, L. 1941; amd. Sec. 1, Ch. 64, L. 1975; R.C.M. 1947, 41-1301(3); amd. Sec. 1, Ch. 554, L. 1989.

39-3-202. Rulemaking power of commissioner. The commissioner is authorized to issue, amend, and enforce rules for the purpose of carrying out the provisions of this part.

History: En. Sec. 4, Ch. 40, L. 1967; R.C.M. 1947, 41-1314.2(part); amd. Sec. 9, Ch. 397, L. 1979.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

"Commissioner of Labor" defined, 39-3-201.

39-3-203. Employer to notify employee on written demand as to rate of wages and date of paydays. (1) Each employer or an authorized representative of the employer shall, on written demand, prior to the commencing of work, notify each employee as to the rate of wages to be paid, whether by the hour, day, week, month, or year, and date of paydays. Such notification must be in writing to each employee or by posting of notice in a conspicuous place.

(2) The provisions of this section do not apply to an employer who has entered into a signed collective bargaining agreement, when such agreement contains conditions of employment, wages to be received, and hours to be worked, or to employers engaged in agriculture or stockraising; provided, however, such employers shall comply with the provisions of 39-3-205.

History: En. Sec. 1, Ch. 11, L. 1919; re-en. Sec. 3084, R.C.M. 1921; re-en. Sec. 3084, R.C.M. 1935; amd. Sec. 1, Ch. 169, L. 1941; amd. Sec. 1, Ch. 64, L. 1975; R.C.M. 1947, 41-1301(1); amd. Sec. 10, Ch. 397, L. 1979.

Cross-References

"Employee" defined, 39-3-201.

"Employer" defined, 39-3-201.

"Wages" defined, 39-3-201.

39-3-204. Payment of wages generally. (1) Except as provided in subsection (4), every employer of labor in the state of Montana shall pay to each employee the wages earned by the employee in lawful money of the United States or checks on banks convertible into cash on demand at the full face value of the checks, and no person for whom labor has been performed may withhold from any employee any wages earned or unpaid for a longer period than 10 business days after the wages are due and payable. However, reasonable deductions may be made for board, room, and other incidentals supplied by the employer, whenever the deductions are a part of the conditions of employment, or other deductions provided for by law.

(2) If at the time of payment of wages any employee is absent from the regular place of labor, the employee is entitled to payment at any time thereafter.

(3) Provisions of this section do not apply to any professional, supervisory, or technical employee who by custom receives wages earned at least once monthly.

(4) Wages may be paid to the employee by electronic funds transfer or similar means of direct deposit if the employee has consented in writing or electronically, if a record is retained, to be paid in this manner. However, an employee may not be required to use electronic funds transfer or similar means of direct deposit as a method for payment of wages.

History: En. Sec. 1, Ch. 11, L. 1919; re-en. Sec. 3084, R.C.M. 1921; re-en. Sec. 3084, R.C.M 1935; amd. Sec. 1, Ch. 169, L. 1941; amd. Sec. 1, Ch. 64, L. 1975; R.C.M. 1947, 41-1301(2); amd. Sec. 11, Ch. 397, L. 1979; amd. Sec. 1, Ch. 134, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 134 in (1), at beginning, inserted exception clause; inserted (4) allowing payment of wages by electronic funds transfer or similar means; and made minor changes in style.

Cross-References

"Employee" defined, 39-3-201.
"Employer" defined, 39-3-201.
"Wages" defined, 39-3-201.
Wages of minors, 40-6-236.

39-3-205. Payment of wages when employee separated from employment prior to payday — exception. (1) Except as provided in subsections (2) and (3), when an employee is separated from the employ of any employer, all the unpaid wages of the employee are due and payable within 3 days, except for employees of the state of Montana and its political subdivisions who would be paid on the next regular payday for the pay period during which the employee was separated from employment or 15 days from the date of separation from employment, whichever occurs first, either through the regular pay channels or by mail if requested by the employee. However, if an employer's payroll checks originate at an office outside the state, the time provided in this section for payment of wages must be extended for 3 additional days.

(2) Except as provided in subsection (3), if an employee is separated for cause from employment by the employer, all the unpaid wages of the employee are due and payable immediately upon the separation.

(3) If an employee is separated from employment by the employer because the employee has committed the offense of theft of the employer's funds or property and criminal charges have been filed by the county attorney against the employee, the employer may apply to the district court for an order temporarily staying the payment of any unpaid wages due the employee and

staying the running of the penalty provided for in 39-3-206 pending the final resolution of criminal proceedings against the employee. If the employee pleads or is found guilty of the criminal offense, the district court may order any wages due and owing to the employee by the employer to be offset against the amount the employee illegally obtained from the employer. If the employee is found not guilty of the criminal offense, the district court may order the employer to pay the employee any wages due, including interest.

History: **En. Sec. 3, Ch. 11, L. 1919; amd. Sec. 1, Ch. 66, L. 1921; re-en. Sec. 3086, R.C.M. 1921; re-en. Sec. 3086, R.C.M. 1935; amd. Sec. 3, Ch. 169, L. 1941; amd. Sec. 2, Ch. 40, L. 1967; R.C.M. 1947, 41-1303; amd. Sec. 1, Ch. 492, L. 1979; amd. Sec. 1, Ch. 583, L. 1989.**

Cross-References

"Employ" defined, 39-3-201.
"Employee" defined, 39-3-201.
"Employer" defined, 39-3-201.
"Wages" defined, 39-3-201.

39-3-206. Penalty for failure to pay wages at times specified in law. (1) An employer who fails to pay an employee as provided in this part or who violates any other provision of this part is guilty of a misdemeanor. A penalty must also be assessed against and paid by the employer to the employee in an amount not to exceed 110% of the wages due and unpaid.

(2) Nothing in this section may be construed to relieve an employer from the requirement to pay an employee the full amount of wages due if the employer is found in violation of this part.

History: **En. Sec. 2, Ch. 11, L. 1919; re-en. Sec. 3085, R.C.M. 1921; re-en. Sec. 3085, R.C.M. 1935; amd. Sec. 2, Ch. 169, L. 1941; amd. Sec. 1, Ch. 40, L. 1967; R.C.M. 1947, 41-1302(part); amd. Sec. 1, Ch. 490, L. 1991; amd. Sec. 2, Ch. 134, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 134 in (1), near end, increased penalty from 100% to 110% of wages due and unpaid; deleted former (2) that read: "(2) The employer shall also pay the employee annualized interest on the unpaid wages from the date the wages were due. The interest must be calculated by the department and compounded annually, but the annualized rate may not be less than 2 percentage points a year above the prime rate of major New York banks on the date of settlement"; in (2), after "wages due", deleted "including interest"; and made minor changes in style.

Cross-References

"Employee" defined, 39-3-201.
"Employer" defined, 39-3-201.
"Wages" defined, 39-3-201.

39-3-207. Period within which employee may recover penalties. Any employee may recover all such penalties as are provided for the violation of 39-3-206 which have accrued to him at any time within 18 months succeeding such default or delay in the payment of such wages.

History: **En. Sec. 4, Ch. 11, L. 1919; re-en. Sec. 3087, R.C.M. 1921; re-en. Sec. 3087, R.C.M. 1935; amd. Sec. 1, Ch. 234, L. 1973; R.C.M. 1947, 41-1304.**

Cross-References

"Employee" defined, 39-3-201.
"Wages" defined, 39-3-201.

39-3-208. Contracts in violation of part void. Any contract or agreement made between an employer and an employee the provisions of which violate, evade, or circumvent this part is unlawful and void, but the employee may sue to recover the wages earned, together with the penalty specified in 39-3-206 or separately to recover the penalty if the wages have been paid.

History: **En. Sec. 5, Ch. 11, L. 1919; re-en. Sec. 3088, R.C.M. 1921; re-en. Sec. 3088, R.C.M. 1935; R.C.M. 1947, 41-1305; amd. Sec. 12, Ch. 397, L. 1979; amd. Sec. 2, Ch. 490, L. 1991; amd. Sec. 3, Ch. 134, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 134 near beginning, after "between", substituted "an employer and an employee" for "any person, partnership, or corporation and any party in his or its employ" and in two places, after "penalty", deleted "and interest"; and made minor changes in style.

Cross-References

Invalidity of contracts to violate law, 28-2-702.

"Employ" defined, 39-3-201.

"Employee" defined, 39-3-201.

"Wages" defined, 39-3-201.

39-3-209. Commissioner of labor to investigate violations and institute actions for unpaid wages. It shall be the duty of the commissioner of labor to inquire diligently for any violations of this part and to institute actions for the collection of unpaid wages and for the penalties provided for herein in such cases as he may deem proper and to enforce generally the provisions of this part.

History: En. Sec. 2, Ch. 11, L. 1919; re-en. Sec. 3085, R.C.M. 1921; re-en. Sec. 3085, R.C.M. 1935; amd. Sec. 2, Ch. 169, L. 1941; amd. Sec. 1, Ch. 40, L. 1967; R.C.M. 1947, 41-1302(part).

Cross-References

"Commissioner of Labor" defined, 39-3-201.

"Wages" defined, 39-3-201.

39-3-210. Investigative powers of commissioner. (1) The commissioner or his authorized representatives are empowered to enter and inspect such places, question such employees, and investigate such facts, conditions, or matters which they may consider appropriate to determine whether any person has violated any provision of this part or any rule issued hereunder or which may aid in the enforcement of the provisions of this part.

(2) The commissioner or his authorized representatives may administer oaths and examine witnesses under oath; issue subpoenas; compel the attendance of witnesses and the production of papers, books, accounts, records, payrolls, documents, and testimony; and take depositions and affidavits in any proceeding before the commissioner.

History: En. Sec. 3, Ch. 40, L. 1967; R.C.M. 1947, 41-1314.1; amd. Sec. 13, Ch. 397, L. 1979.

Cross-References

"Employee" defined, 39-3-201.

39-3-211. Commissioner to take wage assignments. Whenever the commissioner determines that one or more employees have claims for unpaid wages, he shall, upon the written request of the employee, take an assignment of the claim in trust for such employee and may maintain any proceeding appropriate to enforce the claim, including liquidated damages pursuant to this part. With the written consent of the assignor, the commissioner may settle or adjust any claim assigned pursuant to this section.

History: En. Sec. 4, Ch. 40, L. 1967; R.C.M. 1947, 41-1314.2(part); amd. Sec. 14, Ch. 397, L. 1979.

Cross-References

Wagebrokers, Title 31, ch. 1, part 3.

"Employee" defined, 39-3-201.

"Wages" defined, 39-3-201.

39-3-212. Court enforcement of administrative decision. A department default order, a decision of the hearings officer, if the decision is not appealed to the board, or a decision of the board, if judicial review is not sought, may be enforced by application by the commissioner to a district court for an order or judgment enforcing the decision. The commissioner shall apply to the district court where the employer has its principal place of business or in the first judicial district of the state. A proceeding under this section is not a review of the validity of the administrative decision.

History: En. 41-1314.4 by Sec. 1, Ch. 197, L. 1974; R.C.M. 1947, 41-1314.4; amd. Sec. 4, Ch. 554, L. 1989; amd. Sec. 3, Ch. 490, L. 1991.

Cross-References

"Commissioner of Labor" defined, 39-3-201.

"Employer" defined, 39-3-201.

39-3-213. Disposition of wages. (1) The commissioner of labor and industry shall deposit wages collected by him under parts 2 and 4 of this chapter into the agency fund and shall attempt to make payment of wages to the entitled person. Wages deposited into the agency fund are not interest bearing. The payment of wages collected may be made by means of state warrants.

(2) Warrants issued pursuant to subsection (1) which remain unclaimed for more than 1 year from the date of issuance shall be returned to the state auditor for cancellation in accordance with 17-8-303.

History: En. 41-1314.3 by Sec. 1, Ch. 164, L. 1974; R.C.M. 1947, 41-1314.3; amd. Sec. 1, Ch. 53, L. 1979.

Cross-References

"Commissioner of Labor" defined, 39-3-201.

"Wages" defined, 39-3-201.

39-3-214. Court costs and attorneys' fees. (1) Whenever it is necessary for the employee to enter or maintain a suit at law for the recovery or collection of wages due as provided for by this part, a resulting judgment must include a reasonable attorney's fee in favor of the successful party, to be taxed as part of the costs in the case.

(2) Any judgment for the plaintiff in a proceeding pursuant to this part must include all costs reasonably incurred in connection with the proceeding, including attorneys' fees.

(3) If the proceeding is maintained by the commissioner, no court costs or fees are required of him nor is he required to furnish any bond or other security that might otherwise be required in connection with any phase of the proceeding.

History: (1)En. Sec. 6, Ch. 11, L. 1919; re-en. Sec. 3089, R.C.M. 1921; re-en. Sec. 3089, R.C.M. 1935; Sec. 41-1306, R.C.M. 1947; (2), (3)En. Sec. 4, Ch. 40, L. 1967; Sec. 41-1314.2, R.C.M. 1947; R.C.M. 1947, 41-1306, 41-1314.2(part); amd. Sec. 15, Ch. 397, L. 1979.

Cross-References

Governmental entity not required to prepay fees, 25-10-405.

Payment of costs by governmental entities, Title 25, ch. 10, part 7.

"Employee" defined, 39-3-201.

"Wages" defined, 39-3-201.

39-3-215. Authority of county attorney. Nothing herein contained shall be construed to limit the authority of the county attorney of any county of the state to prosecute actions, both civil and criminal, for such violations of this part as may come to his knowledge or to enforce the provisions hereof independently and without specific direction of the commissioner of labor.

History: En. Sec. 2, Ch. 11, L. 1919; re-en. Sec. 3085, R.C.M. 1921; re-en. Sec. 3085, R.C.M. 1935; amd. Sec. 2, Ch. 169, L. 1941; amd. Sec. 1, Ch. 40, L. 1967; R.C.M. 1947, 41-1302(part).

Cross-References

County Attorney — duties generally, Title 7, ch. 4, part 27.

"Commissioner of Labor" defined, 39-3-201.

39-3-216. Hearing. (1) If the department determines that a wage claim exists and the employer does not appeal the determination, the department may enter a default order against the employer for the amount of wages due and owing. The department may enforce the default order pursuant to 39-3-212.

(2) When the department determines that a wage claim exists, the department shall mail the determination to the parties at the last-known address of each party. If a party appeals the department's determination within 15 days after the determination is mailed by the department, a hearing must be conducted according to contested case procedures under Title 2, chapter 4, part 6, except that service need not be made as prescribed for civil actions in the district court and the hearings officer is not bound by statutory or common-law rules of evidence. The department shall by rule provide relief for a person who does not receive the determination by mail.

(3) The decision of the hearings officer is final unless further review is initiated pursuant to 39-3-217 within 15 days after the decision is mailed to each party's last-known address. The period may be extended by the board for good cause.

History: En. Sec. 2, Ch. 554, L. 1989; amd. Sec. 4, Ch. 490, L. 1991; amd. Sec. 4, Ch. 134, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 134 in (2), near beginning after "exists", substituted "the department shall mail the determination to the parties at the last-known address of each party. If a party appeals the department's determination within 15 days after the determination is mailed by the department, a" for "and if it fails to settle the claim with the parties, it shall cause the matter to be brought to a hearing before a department hearings officer. The", in second sentence, after "except that", inserted "service need not be made as prescribed for civil actions in the district court and", and inserted third sentence requiring the Department to provide relief by rule for a person who does not receive the determination by mail.

39-3-217. Appeal to board. If a party is aggrieved by the decision of the hearings officer, he may appeal the decision to the board. The hearing before the board is for review only, and the submission of new or cumulative evidence is not allowed unless the board finds that good cause is shown for the failure to produce the evidence before the hearings officer. When a decision is rendered by the board, the board shall mail copies of the decision to each interested party at his last-known address, and to the department. The decision is final unless an aggrieved party requests a rehearing or initiates judicial review, pursuant to Title 2, chapter 4, part 7, by filing a petition in district court within 30 days of the date of mailing of the board's decision.

History: En. Sec. 3, Ch. 554, L. 1989.

Part 3

Reciprocal Agreement for Collection of Wages Act

39-3-301. Short title. This part may be cited as "The Reciprocal Agreement for Collection of Wages Act of 1977".

History: En. 41-1326 by Sec. 1, Ch. 216, L. 1977; R.C.M. 1947, 41-1326.

39-3-302. Purpose. The purpose of this part is to provide for a method of reciprocal enforcement in other states of Montana's wage payment laws contained in part 2 of this chapter and to provide for reciprocal enforcement in Montana of similar wage payment laws of other states.

History: En. 41-1327 by Sec. 2, Ch. 216, L. 1977; R.C.M. 1947, 41-1327.

39-3-303. Reciprocal agreements for collection of wages. The department of labor and industry may enter into reciprocal agreements with the labor department or corresponding agency of another state or with the person, board, officer, or commission authorized to act for and on behalf of the department or agency for the collection in the other state of claims or judgments for wages and other demands based upon claims previously assigned to the department of labor and industry.

History: En. 41-1328 by Sec. 3, Ch. 216, L. 1977; R.C.M. 1947, 41-1328.

39-3-304. Actions in other states for collections of claims — assignments for collection. The department of labor and industry may, to the extent provided by a reciprocal agreement entered into pursuant to 39-3-303 or by the laws of another state, maintain actions in the courts of another state for the collection of claims for wages, judgments, and other demands and may assign the claims, judgments, and demands to the labor department or agency of another state for collection to the extent permitted or provided for by the laws of the other state or by reciprocal agreement.

History: En. 41-1329 by Sec. 4, Ch. 216, L. 1977; R.C.M. 1947, 41-1329.

39-3-305. Claims assigned by other states — actions — collection. The department of labor and industry may, upon the written request of the labor department or other corresponding agency of another state or a person, board, officer, or commission of the other state authorized to act for and on behalf of the labor department or corresponding agency, maintain actions in the courts of this state upon assigned claims for wages, judgments, and demands arising in the other state in the same manner and to the same extent that these actions by the department of labor and industry are authorized when arising in this state. However, these actions may be commenced and maintained only in those cases where the other state, by appropriate legislation or by reciprocal agreement, extends a like comity to similar cases arising in this state.

History: En. 41-1330 by Sec. 5, Ch. 216, L. 1977; R.C.M. 1947, 41-1330.

39-3-306. Limitations. Limitations regarding the amount of wages covered by a reciprocal agreement or the time during which the wages are accrued shall be the limitations imposed by the laws of the state originating the action.

History: En. 41-1331 by Sec. 6, Ch. 216, L. 1977; R.C.M. 1947, 41-1331.

Part 4

Minimum Wage and Overtime Compensation

39-3-401. Declaration of policy. It is declared to be the policy of this part to:

(1) establish minimum wage and overtime compensation standards for workers at levels consistent with their health, efficiency, and general well-being;

(2) safeguard existing minimum wage and overtime compensation standards which are adequate to maintain the health, efficiency, and general well-being of workers against the unfair competition of wage and hour standards which do not provide such adequate standards of living; and

(3) sustain purchasing power and increase employment opportunities.

History: En. Sec. 1, Ch. 417, L. 1971; R.C.M. 1947, 41-2301.

39-3-402. Definitions. As used in this part, the following definitions apply:

(1) "Commissioner" means the commissioner of labor and industry.

(2) "Employ" means to suffer or permit to work.

(3) "Employee" means an individual employed by an employer.

(4) "Farm or ranch" means any endeavor primarily engaged in cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, and poultry and fur-bearing animals and wildlife.

(5) "Farm worker" means a person employed to do any service performed on a farm or ranch.

(6) "Occupation" means any occupation, service, trade, business, industry, or branch or group of industries or employment or class of employment in which employees are gainfully employed.

(7) "Wage" means compensation due to an employee by reason of his employment, payable in legal tender of the United States or check on banks convertible into cash on demand at full face value, subject to an allowance as may be permitted by regulations of the commissioner under 39-3-403. The term "wage" includes the reasonable cost to the employer of furnishing the employee with lodging or other facility if the lodging or other facility is customarily furnished by the employer to his employees; however, the inclusion may not exceed an amount equal to 40% of the total wage paid by the employer to the employee. The term "wage" does not include the cost to the employer of providing meals or a meal allowance to the employee or the value of any tips received by an employee as a gratuity for service.

History: En. Sec. 2, Ch. 417, L. 1971; R.C.M. 1947, 41-2302; amd. Sec. 1, Ch. 446, L. 1987; amd. Sec. 1, Ch. 216, L. 1991.

39-3-403. Regulations. The commissioner shall make and revise administrative regulations to carry out the purposes of this part. Such regulations shall take effect upon publication by the commissioner. Any person who is aggrieved by an administrative regulation may obtain a hearing before the commissioner upon filing written protest with the commissioner, who shall thereupon set such matter for hearing in the county of residence of such protestant within 30 days after receipt of such protest. After such hearing, the commissioner shall promulgate such further administrative regulations as the evidence produced at said hearing shall justify.

History: **En. Sec. 5, Ch. 417, L. 1971; R.C.M. 1947, 41-2305.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

"Commissioner" defined, 39-3-402.

39-3-404. Minimum wage. (1) Except as otherwise provided in this part and except for farm workers as provided in subsection (2), every employer shall pay to each of his employees a wage of not less than the applicable minimum wage as determined by the commissioner in accordance with 39-3-409.

(2) In the case of a farm worker employed for a part of a calendar year which includes periods requiring working hours in excess of 8 hours per day and other seasonal periods requiring working hours substantially less than 8 hours per day, the employer may pay the worker at a fixed rate of compensation during the term of employment. The employer may elect to:

(a) keep a record of the total number of hours worked by the worker during the part of the year during which the worker was employed by him (the total wages paid by such employer to such employee for that part of the year during which said employee was employed by him shall not be less than the applicable minimum wage rate multiplied by the total number of hours so worked); or

(b) in lieu of the minimum wage set forth herein, pay the farm worker a wage as herein defined on a monthly basis. This monthly compensation shall constitute a minimum wage and shall not be less than $635 a month beginning January 1, 1990.

History: **En. Sec. 3, Ch. 417, L. 1971; amd. Sec. 1, Ch. 363, L. 1973; amd. Sec. 1, Ch. 421, L. 1975; R.C.M. 1947, 41-2303(a), (c); amd. Sec. 1, Ch. 410, L. 1981; amd. Sec. 1, Ch. 360, L. 1985; amd. Sec. 1, Ch. 674, L. 1989.**

Cross-References

Eight-hour maximum workday, Art. XII, sec. 2, Mont. Const.

Standard prevailing wages in public works, Title 18, ch. 2, part 4.

"Employee" defined, 39-3-402.

"Farm worker" defined, 39-3-402.

"Wage" defined, 39-3-402.

39-3-405. Overtime compensation. (1) No employer shall employ any of his employees for a workweek longer than 40 hours unless such employee receives compensation for his employment in excess of 40 hours in a workweek at a rate of not less than 1 1/2 times the hourly wage rate at which he is employed.

(2) No overtime provision shall apply for farm workers.

(3) Employers of students at an amusement or recreational area that operates on a seasonal basis who furnish said students with board, lodging, or other facilities shall not employ said students for a workweek longer than 48 hours, unless such students receive compensation for their employment in excess of 48 hours in a workweek at a rate of not less than 1 1/2 times the hourly wage rate at which they are employed.

History: **En. Sec. 3, Ch. 417, L. 1971; amd. Sec. 1, Ch. 363, L. 1973; amd. Sec. 1, Ch. 421, L. 1975; R.C.M. 1947, 41-2303(b).**

Cross-References

Eight-hour maximum workday, Art. XII, sec. 2, Mont. Const.

Department of Public Safety — work period in lieu of workweek — overtime compensation, 7-32-115.

"Employ" defined, 39-3-402.

"Employee" defined, 39-3-402.

"Wage" defined, 39-3-402.

39-3-406. Exclusions. (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores such as babysitting, mowing lawns, cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) any persons not regular employees of a nonprofit organization who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) handicapped workers engaged in work that is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that the exclusion may not exceed 180 days from their initial date of employment and further provided that during this exclusion period wages paid the learners may not be less than 50% of the minimum wage rate established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) any individual employed in a bona fide executive, administrative, or professional capacity as these terms are defined by regulations of the commissioner;

(k) any individual employed by the United States of America;

(l) resident managers employed in lodging establishments or personal care facilities who, under the terms of their employment, live in the establishment or facility;

(m) an outside salesperson or marketing representative paid on a commission, contract, or salary basis who is primarily employed in selling or marketing products or services in the food distribution industry for a food broker, wholesaler, or association.

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 304;

(b) an employee of an employer subject to the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) an outside salesperson paid on a commission or contract basis who is primarily employed in selling advertising for a newspaper;

(e) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily engaged in the business of selling the vehicles or implements to ultimate purchasers;

(f) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(g) an outside salesperson paid on a commission or contract basis who is primarily employed in selling office supplies, computers, or other office equipment for an office equipment dealer;

(h) a salesperson paid on a commission or contract basis who is primarily engaged in selling advertising for a radio or television station employer;

(i) an employee employed as a driver or driver's helper making local deliveries who is compensated for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that the plan has the general purpose and effect of reducing hours worked by the employees to or below the maximum workweek applicable to them under 39-3-405;

(j) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit and not operated on a sharecrop basis and that are used exclusively for supply and storing of water for agricultural purposes;

(k) an employee employed in agriculture by a farmer, notwithstanding other employment of the employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to the raising of livestock, either alone or in conjunction with other farmers, if the employee is:

(i) primarily employed during a workweek in agriculture by a farmer; and

(ii) paid for employment in connection with the livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(l) an employee of an establishment commonly recognized as a country elevator, including an establishment that sells products and services used in the operation of a farm, if no more than five employees are employed by the establishment;

(m) a driver employed by an employer engaged in the business of operating taxicabs;

(n) an employee who is employed with the employee's spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in the institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as the employee and the employee's spouse reside in the facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than $10,000;

(o) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by the employer in the forestry or lumbering operations does not exceed eight;

(p) an employee of a sheriff's department who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1);

(q) an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(r) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 8 hours per day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(s) a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative;

(t) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118;

(u) an employee of a department of public safety working under a work period established pursuant to 7-32-115;

(v) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938 and if more than half of the employee's compensation for a period of not less than 1 month is derived from commissions on goods and services.

History: (1)En. Sec. 4, Ch. 417, L. 1971; amd. Sec. 19, Ch. 94, L. 1973; R.C.M. 1947, 41-2304; (2)En. Sec. 1, Ch. 572, L. 1979; amd. Sec. 6, Ch. 603, L. 1981; amd. Sec. 1, Ch. 375, L. 1983; amd. Sec. 3, Ch. 562, L. 1983; amd. Sec. 1, Ch. 640, L. 1983; amd. Sec. 3, Ch. 256, L. 1985; amd. Sec. 1, Ch. 175, L. 1987; amd. Sec. 1, Ch. 353, L. 1987; amd. Sec. 1, Ch. 650, L. 1987; amd. Sec. 1, Ch. 276, L. 1991; amd. Sec. 1, Ch. 95, L. 1993; amd. Sec. 1, Ch. 405, L. 1993.

Compiler's Comments

1993 Amendments — Composite Section: Chapter 95 in (1)(j), after "defined", deleted "and delimited"; inserted (1)(m) excluding certain outside salespersons or marketing representatives employed in selling or marketing products or services in the food distribution industry; and made minor changes in style. Amendment effective March 16, 1993.

Chapter 405 inserted (2)(v) relating to a retail employee with a pay rate exceeding 1 1/2 times the federal minimum hourly rate and more than half of whose compensation for at least 1 month is from commissions; and made minor changes in style.

A style change in (2)(k) was slightly different in the two chapters. The codifier chose the more appropriate of the two.

Cross-References

Labor — hours of employment, Art. XII, sec. 2, Mont. Const.

Compensation of Deputy Sheriffs and undersheriffs, 7-4-2507 through 7-4-2509.

"Commissioner" defined, 39-3-402.

"Employees" defined, 39-3-402.

"Farm or ranch" defined, 39-3-402.

"Farm worker" defined, 39-3-402.

"Wages" defined, 39-3-402.

39-3-407. Enforcement. Enforcement of this part shall be treated as a wage claim action and shall be pursued in accordance with part 2 of this chapter, as amended. This part may also be enforced in accordance with part 5 of this chapter for the benefit of certain employees in the mineral and oil industry. The commissioner may enforce this part without the necessity of a wage assignment.

History: En. Sec. 6, Ch. 417, L. 1971; amd. Sec. 2, Ch. 363, L. 1973; R.C.M. 1947, 41-2306; amd. Sec. 1, Ch. 49, L. 1979.

39-3-408. Provisions cumulative. (1) The provisions of this part shall be in addition to other provisions now provided by law for the payment and collection of wages and salaries but shall not apply to employees covered by the Fair Labor Standards Act except as provided in subsection (2).

(2) Sections 39-3-402 and 39-3-404 shall apply to an employee covered by the Fair Labor Standards Act if state law provides a minimum wage that is higher than the minimum wage established under federal law.

History: En. Sec. 7, Ch. 417, L. 1971; amd. Sec. 3, Ch. 363, L. 1973; R.C.M. 1947, 41-2307; amd. Sec. 2, Ch. 446, L. 1987.

39-3-409. Adoption of minimum wage rates — exception. (1) The commissioner shall adopt rules to establish a minimum wage that, except as provided in subsection (2), must be the same minimum hourly wage rate as provided under the federal Fair Labor Standards Act (29 U.S.C. 206(a)(1)), excluding the value of tips received by the employee and the special provisions for a training wage.

(2) The minimum wage rate for a business whose annual gross sales are $110,000 or less is $4 an hour.

History: En. Sec. 2, Ch. 674, L. 1989; amd. Sec. 1, Ch. 650, L. 1991.

39-3-410. Repealed. Sec. 2, Ch. 650, L. 1991.

History: En. Sec. 3, Ch. 674, L. 1989.

Part 5

Wage Protection for Certain Employees of Mineral and Oil Industry

39-3-501. Certain laws extended to certain employers in mineral and oil industry. For the purposes of this part, all the provisions of part 2 of this chapter extend to and govern every person, firm, partnership, or corporation engaged in the business of extracting or of extracting and refining or reducing metals and minerals or mining for coal or drilling for oil, except such persons, firms, partnerships, or corporations as have a free and unencumbered title to not less than one-half the fee of the property being worked. For this purpose, an outstanding unpaid or unredeemed tax sale certificate is not considered an encumbrance.

History: En. Sec. 1, Ch. 39, L. 1939; R.C.M. 1947, 41-1312; amd. Sec. 16, Ch. 397, L. 1979.

39-3-502. Operator to file statement — penalty for failure to file. (1) Every person, firm, or partnership coming within the provisions of this part shall, before commencing operations, file with the commissioner of labor and industry and also in the office of the county clerk and recorder of each county where such operations are to be carried on a verified statement showing the names and addresses of each party interested therein or, if a corporation, the names and addresses of its officers and directors, the principal place of business of such corporation, and the names and addresses of the person or persons resident of Montana designated as the person or persons upon whom service of process may be made.

(2) Every person, firm, partnership, or corporation failing to file a statement with the commissioner of labor and industry and in the offices of the county clerk and recorders, as provided in subsection (1), shall be deemed guilty of a misdemeanor and punishable as provided by law.

History: (1)En. Sec. 2, Ch. 39, L. 1939; Sec. 41-1313, R.C.M. 1947; (2)En. Sec. 3, Ch. 39, L. 1939; Sec. 41-1314, R.C.M. 1947; R.C.M. 1947, 41-1313, 41-1314.

Cross-References

Misdemeanor penalty when none specified, 46-18-212.

39-3-503. Report of violations to county attorney by commissioner. Whenever it shall appear from reliable information satisfactory to the commissioner of labor and industry that any person, firm, partnership, or corporation engaged in the business mentioned in 39-3-501 and not exempt from the effect of this part shall have failed to pay any wages or salaries due his employees as required by part 2 of this chapter, he shall have the right to deliver such information to the county attorney of the county wherein the operations of the employer are being carried on and to request such county attorney to file a complaint in the district court of said county in accordance with the provisions of this part and part 2 of this chapter.

History: En. Sec. 4, Ch. 39, L. 1939; R.C.M. 1947, 41-1315(1).

39-3-504. Report of violations directly to county attorney by employee. Any employee may make complaint directly to the county attorney relative to any violation of this part or part 2 of this chapter.

History: En. Sec. 4, Ch. 39, L. 1939; R.C.M. 1947, 41-1315(part); amd. Sec. 17, Ch. 397, L. 1979.

39-3-505. County attorney to notify commissioner of violation reported directly by employee. The county attorney of the county shall promptly notify the commissioner of labor and industry of any complaint made by any employee relative to the violation of any of the provisions of this part or part 2 of this chapter and shall in writing keep the commissioner advised of each step in any proceeding taken by the county attorney thereunder.

History: En. Sec. 4, Ch. 39, L. 1939; R.C.M. 1947, 41-1315(part); amd. Sec. 18, Ch. 397, L. 1979.

39-3-506. County attorney to file complaint in district court on belief of violation. If a county attorney believes after receiving information that the provisions of this part or part 2 of this chapter have been violated and that such violation was willful or that the financial condition of the employer is such as to endanger employees in receiving prompt payment or collection of wages, he shall file a complaint in district court. All proceedings upon such complaint must be promptly prosecuted.

History: **En. Sec. 4, Ch. 39, L. 1939; R.C.M. 1947, 41-1315(part); amd. Sec. 19, Ch. 397, L. 1979.**

39-3-507. Prayer for relief. Should such complaint be filed by the county attorney upon his own motion or at said request of said commissioner of labor and industry, the same shall pray that relief be had against the employer for the greater security for the payment of salaries and wages of the employees.

History: **En. Sec. 4, Ch. 39, L. 1939; R.C.M. 1947, 41-1315(part).**

39-3-508. Summons — service of process. (1) Upon the filing of such complaint, summons shall issue thereon and a copy of such complaint and a copy of the summons shall be served upon the employer, who shall have 10 days after such service to appear and defend such action.

(2) All orders and other process provided for in this part shall be served by the sheriff upon the employer in the same manner as a summons in a civil suit is served. Service upon any partner or member of any firm shall be considered service upon each partner and each member of the firm. In the event that the employer is a nonresident or a corporation without officers or directors within the county who cannot conveniently and promptly be found for service, then service upon the manager, superintendent, or foreman in charge of the work or, there being none such, then posting a copy of the order or other process provided to be served herein in a conspicuous place at or near the entrance to the principal workings shall be deemed sufficient service.

History: **(1)En. Sec. 4, Ch. 39, L. 1939; Sec. 41-1315, R.C.M. 1947; (2)En. Sec. 7, Ch. 39, L. 1939; Sec. 41-1318, R.C.M. 1947; R.C.M. 1947, 41-1315(part), 41-1318.**

Cross-References

Definitions and procedure for process and service, 25-3-101; Rule 4, M.R.Civ.P. (see Title 25, ch. 20).

39-3-509. Hearing on complaint — court order to pay wages due or appear and show cause why bond should not be required. Upon the conclusion of the hearing upon such complaint, the judge of the district court may make findings and shall issue an order to the employer in default to pay within 5 days all wages and salaries found by the court to be due and unpaid or an order to appear before the court within 10 days and show cause why a judgment and order should not issue requiring said employer to give bond for the payment of all wages and salaries then due and thereafter to accrue to his employees within said county. Service of such order shall be made at least 5 days before the date set for hearing or the date to which such hearing may be continued by the court upon good cause shown.

History: **En. Sec. 5, Ch. 39, L. 1939; R.C.M. 1947, 41-1316.**

39-3-510. Show-cause hearing — restraining order until bond furnished. Upon the hearing of such order, if the court shall determine that the default of said employer in the payment of wages and salaries was willful or that the financial condition of the employer is such as to endanger or delay or impede employees in collecting their wages and salaries or that the employer is a nonresident of the state without visible property in said county subject to execution or who has within 2 years defaulted in payroll payments, the court may adjudge and decree that the employee or employees are endangered in the collection of their just demands and the court may issue a restraining order against the employer forbidding further prosecution of operations by said employer until after the employer has furnished a good and sufficient bond, in form to be approved by the court with good and sufficient surety or sureties who can and do legally justify, and deposit said bond with the clerk of court of said county obligating the employer to pay all wages and salaries as required by part 2 of this chapter.

History: En. Sec. 6, Ch. 39, L. 1939; R.C.M. 1947, 41-1317(part).

Cross-References

Injunctions, Title 27, ch. 19.

39-3-511. Bond requirements. (1) Said bond may be that of a surety company licensed and authorized to do business within the state or of two owners of real estate situate in said county and who can and do justify as sureties in the same manner as sureties justify on appeal bonds or bail bonds.

(2) Said bond shall be in the sum of not less than $500 for each unit of five men or less employed by such person, firm, partnership, or corporation.

(3) Said bond shall continue in force for 1 year.

(4) Said bond shall run in the name of the state of Montana and shall be examined and approved by the judge of the district court, said approval to be endorsed thereon.

History: En. Sec. 6, Ch. 39, L. 1939; R.C.M. 1947, 41-1317(part).

Cross-References

Undertakings for security, Title 25, ch. 1, part 4.

39-3-512. Enjoining further operations in event bond not filed. (1) In the event that the bond ordered by the district court is not executed and filed with the county treasurer within the time fixed by the court, the court may, if it deems the persons working for such employer to be insecure in the prompt payment or collection of their wages or salaries, enjoin any and all further operations of said employer within the state for a period of 1 year at any mine or reduction works or oil well or until the order, judgment, or decree of the court shall have been fully complied with.

(2) The county attorney of the county wherein such proceedings are had or the attorney general of the state shall, at his or their discretion, file such action and prosecute the same.

History: En. Sec. 8, Ch. 39, L. 1939; R.C.M. 1947, 41-1319(part).

Cross-References

Injunctions, Title 27, ch. 19.

39-3-513. Costs of proceeding. The said district court shall include in any order, judgment, or decree against the employer all costs of the proceeding, which shall be taxed against the employer and paid into the clerk of the court to be by him deposited with the county treasurer to the credit of the general fund of the county.

History: En. Sec. 8, Ch. 39, L. 1939; R.C.M. 1947, 41-1319(part).

Cross-References

Costs, Title 25, ch. 10.

39-3-514. Punishment of employer for contempt. In event the employer fails for 30 days or more to pay the costs of the proceeding and/or fails to furnish the bond required by the court, the court may proceed against and punish said employer for contempt of court.

History: **En. Sec. 9, Ch. 39, L. 1939; R.C.M. 1947, 41-1320.**

Cross-References

Contempts, Title 3, ch. 1, part 5.

39-3-515. Publication of notice of court order. In the discretion of the court, it may order the clerk of the court to publish a brief notice or memorandum in a newspaper published in the county of the entry of the order against the employer requiring said employer to furnish said bond. Said publication shall be for 4 consecutive weeks. The cost of such publication shall be assessed against the employer as one of the costs of the proceeding.

History: **En. Sec. 10, Ch. 39, L. 1939; R.C.M. 1947, 41-1321.**

39-3-516. Review of court order by supreme court. In event any employer against whom an order to furnish the bond described in this part feels aggrieved by any order or injunction of the district court, he shall be entitled, upon payment for the transcript of record, to have his objections and exceptions reviewed and determined by the supreme court as upon a writ of certiorari.

History: **En. Sec. 12, Ch. 39, L. 1939; R.C.M. 1947, 41-1323.**

39-3-517. Suit on bond. Any person whose wages or salary has remained unpaid for 15 days or more after due shall have a right to sue upon said bond for the recovery of his wages or salary.

History: **En. Sec. 6, Ch. 39, L. 1939; R.C.M. 1947, 41-1317(part).**

39-3-518. Attorney's fee for suit on bond. In event any person whose wages or salary has remained unpaid for 15 days or more after due shall bring suit as in 39-3-517 provided, the court shall assess as costs against the unsuccessful party a reasonable attorney's fee.

History: **En. Sec. 11, Ch. 39, L. 1939; R.C.M. 1947, 41-1322.**

Cross-References

Attorney fees, Title 25, ch. 10, part 3.

39-3-519. Clarification as to construction and applicability of part. (1) Nothing contained in this part shall be considered as requiring any person, firm, partnership, or corporation to file a bond or bonds if he or it pays for all labor in full each day or where such labor has been performed upon a written building or construction contract to furnish material or other consideration as well as labor.

(2) Nothing herein shall prohibit the making or entering into of any wage or working agreement such as grubstake agreements and/or similar agreements, provided such employer or contractor keeps in force proper workers' compensation insurance.

History: **En. Sec. 6, Ch. 39, L. 1939; R.C.M. 1947, 41-1317(part).**

39-3-520. Remedy cumulative. The remedy herein provided for the greater security for the payment of wages and salaries and the collection thereof shall be in addition to any remedy now provided by law for the payment and collection of wages and salaries.

History: **En. Sec. 13, Ch. 39, L. 1939; R.C.M. 1947, 41-1324.**

Cross-References

Civil remedies in general, Title 27.

Part 6

Restaurant, Bar, and Tavern Wage Protection Act

39-3-601. Short title. This part shall be known as the "Restaurant, Bar, and Tavern Wage Protection Act".

History: En. Sec. 1, Ch. 155, L. 1965; R.C.M. 1947, 41-2001.

39-3-602. Purpose. The purpose of this part is to protect the state of Montana and employees of persons operating businesses as restaurants, bars, and taverns; to assure the payment of wages to such employees in the event the person ceases operation of his business and is unable to pay the wages due and owing to his employees; and to assure the payment of payroll taxes to the department.

History: En. Sec. 3, Ch. 155, L. 1965; amd. Sec. 2, Ch. 198, L. 1974; amd. Sec. 1, Ch. 238, L. 1975; R.C.M. 1947, 41-2003; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 366, L. 1983.

39-3-603. Definitions. For the purposes of this part, the words and phrases used herein have the following meaning:

(1) "Bar" or "tavern" means a place where liquor or beer is sold to be drunk on the premises.

(2) "Beer" means any beverage so defined in the Montana Alcoholic Beverage Code.

(3) "Business" means a commercial enterprise of any kind involving the buying and selling of goods.

(4) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

(5) "Department" means the department of labor and industry provided for in 2-15-1701.

(6) "Employee" means a person who works for wages or salary in the service of an employer. The term does not include a member of an employer's immediate family.

(7) "Immediate family" means the spouse, parents, children, grandchildren, brothers, or sisters of a person operating a business as a restaurant, bar, or tavern.

(8) "Liquor" has the same meaning as specified in 16-1-106.

(9) "Person" includes any establishment, firm, partnership, corporation, person, or association of persons.

(10) "Restaurant" means a public eating place where food is prepared and served for human consumption on the premises.

History: En. Sec. 4, Ch. 155, L. 1965; amd. Sec. 3, Ch. 198, L. 1974; amd. Sec. 118, Ch. 387, L. 1975; R.C.M. 1947, 41-2004; amd. Sec. 2, Ch. 366, L. 1983; amd. Sec. 1, Ch. 546, L. 1989.

39-3-604. Bond to be filed — bond requirements — payment — exception. (1) Except as provided in 39-3-605 and subsection (4), a person operating a business as a restaurant, bar, or tavern is required to file a bond equal to at least double the amount of the projected semimonthly payroll with the commissioner. The bond must be kept in full force and effect, and any cancellation or revocation of the bond or withdrawal of the sureties from the bond is grounds for enjoining the operation of business, as provided for in 39-3-607, until a new bond of like tenure and effect is filed and approved.

(2) The bond required by subsection (1) must be filed with the commissioner. The state of Montana must be named as the obligee, with good and sufficient sureties to be approved by the attorney general.

(3) The bond must assure that the employees who perform labor or other personal services are guaranteed their wages if the person ceases operation of the business for any reason and is unable to pay the wages due and owing the employees and must assure payment due the department as a result of old fund liability taxes.

(4) The bond must first be used to pay wages due and owing employees, then to pay old fund liability taxes due the department. The bond may not be used to pay an amount due the state compensation insurance fund established in 39-71-2313.

(5) Except as provided in 39-3-605(2), this section does not apply to any person who has operated the same restaurant, bar, or tavern continuously since October 1, 1980.

History: Ap. p. Sec. 5, Ch. 155, L. 1965; amd. Sec. 4, Ch. 198, L. 1974; Sec. 41-2005, R.C.M. 1947; Ap. p. Sec. 6, Ch. 155, L. 1965; amd. Sec. 5, Ch. 198, L. 1974; amd. Sec. 2, Ch. 238, L. 1975; Sec. 41-2006, R.C.M. 1947; R.C.M. 1947, 41-2005, 41-2006; amd. Sec. 1, Ch. 60, L. 1979; amd. Sec. 3, Ch. 366, L. 1983; amd. Sec. 2, Ch. 546, L. 1989; amd. Sec. 5, Ch. 490, L. 1991; amd. Sec. 14, Ch. 630, L. 1993.

Compiler's Comments

Name Change — Directions to Code Commissioner: Section 14, Ch. 630, L. 1993, provided: "Wherever the name "state compensation mutual insurance fund", meaning the fund established in 39-71-2313, appears in the Montana Code Annotated or in legislation enacted by the 1993 legislature, the code commissioner is directed to change the name to "state compensation insurance fund"." The phrase appeared in this section and was changed by the Code Commissioner as directed.

Section 15, Ch. 637, L. 1993, provided: "Wherever the phrase "payroll tax" appears in Title 39, chapter 71, or in legislation enacted by the 1993 legislature that is intended to be codified in Title 39, chapter 71, the code commissioner is directed to change the phrase to "old fund liability tax"." The phrase appeared in this section and was changed by the Code Commissioner as directed.

Cross-References

Suretyship, Title 28, ch. 11, part 4.
"Bar" defined, 39-3-603.
"Business" defined, 39-3-603.
"Person" defined, 39-3-603.
"Restaurant" defined, 39-3-603.
"Tavern" defined, 39-3-603.

39-3-605. Waiver of bond — new or additional bond — exemption. (1) After 3 years of compliance with this part, the commissioner shall waive the provisions of 39-3-604 for any person showing compliance with the applicable provisions of the Fair Labor Standards Act and all the applicable laws administered by the department.

(2) Notwithstanding 39-3-604(5) and subsection (1) of this section, the commissioner may require a person operating a restaurant, bar, or tavern, including a person who has been in business since October 1, 1980, or for over 3 years, to file a new bond or a bond of a greater amount than double the semimonthly payroll whenever the person operating a restaurant, bar, or tavern defaults on the payment of wages or payroll taxes.

(3) A person who owns and operates a restaurant, bar, or tavern is exempt from the provisions of 39-3-604 to the extent that 39-3-604 would otherwise

require filing of a bond based on the payroll and wages attributable to members of the immediate family of the person who owns and operates the restaurant, bar, or tavern.

History: En. Sec. 10, Ch. 155, L. 1965; amd. Sec. 3, Ch. 238, L. 1975; R.C.M. 1947, 41-2010(part); amd. Sec. 4, Ch. 366, L. 1983; amd. Sec. 3, Ch. 546, L. 1989; amd. Sec. 6, Ch. 490, L. 1991.

39-3-606. Power of commissioner to discharge existing sureties and require others. The commissioner of labor and industry may, after due notice given, discharge the existing sureties from further liability and require that other sureties be provided.

History: En. Sec. 10, Ch. 155, L. 1965; amd. Sec. 3, Ch. 238, L. 1975; R.C.M. 1947, 41-2010(part).

39-3-607. Enjoining business until bond filed. If any person operates a restaurant, bar, or tavern business without having first filed a bond as required by 39-3-604 or by 39-3-605, the attorney general, the commissioner, or any citizen, group of citizens, or any association in the county where the violator operates his business may institute an action to enjoin such person from operating the business until compliance with this part has been met.

History: En. Sec. 8, Ch. 155, L. 1965; R.C.M. 1947, 41-2008; amd. Sec. 5, Ch. 366, L. 1983.

Cross-References

Injunctions, Title 27, ch. 19.
"Bar" defined, 39-3-603.
"Business" defined, 39-3-603.
"Person" defined, 39-3-603.
"Restaurant" defined, 39-3-603.
"Tavern" defined, 39-3-603.

39-3-608. Unlawful to operate business without bond. From and after October 1, 1983, it shall be unlawful for any person to operate a restaurant, bar, or tavern business without first having filed with the commissioner a bond in accordance with the requirements of 39-3-604 or 39-3-605.

History: En. Sec. 2, Ch. 155, L. 1965; amd. Sec. 1, Ch. 198, L. 1974; R.C.M. 1947, 41-2002; amd. Sec. 6, Ch. 366, L. 1983.

Cross-References

"Bar" defined, 39-3-603.
"Business" defined, 39-3-603.
"Person" defined, 39-3-603.
"Restaurant" defined, 39-3-603.
"Tavern" defined, 39-3-603.

Part 7

Contractors' Bonds for Wages and Benefits

39-3-701. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Commissioner" means the commissioner of labor and industry.

(2) "Contractor" means any person, firm, association, or corporation engaged in the construction business.

(3) "Resident contractor" means any person who is a bona fide resident of this state, any partnership or association, the majority of whose members are bona fide residents of this state, or any corporation organized and existing under the laws of the state of Montana.

History: (1), (2)En. 41-2501 by Sec. 1, Ch. 208, L. 1975; Sec. 41-2701, R.C.M. 1947; (3)En. 41-2504 by Sec. 4, Ch. 208, L. 1975; Sec. 41-2704, R.C.M. 1947; R.C.M. 1947, 41-2701, 41-2704(2).

39-3-702. Rules. The commissioner shall promulgate any rules necessary to carry out the provisions of this part.

History: En. 41-2505 by Sec. 5, Ch. 208, L. 1975; R.C.M. 1947, 41-2705.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

39-3-703. Contractor to furnish bond for wages and fringe benefits — bond requirements. (1) Any contractor who contracts with another to do any work or perform any services for the other, except personal services of the contractor not involving work of hired employees, shall furnish a surety bond or other form of security to the other which shall be:

(a) approved by the commissioner;

(b) in an amount equal to the contractor's average monthly payroll as estimated by the commissioner;

(c) in the name of the state of Montana;

(d) for the purpose of insuring the wages and fringe benefits of all workers employed by the contractor for the contracted work;

(e) filed with the commissioner within 1 week of the making of the contract or the commencement of work thereunder, whichever comes first.

(2) Only one bond shall be required on any contractor for each year, and when the bond is filed with and approved by the commissioner, the commissioner shall certify to any person contracting with a contractor that the bond is in full force and effect.

History: En. 41-2502 by Sec. 2, Ch. 208, L. 1975; R.C.M. 1947, 41-2702(1), (3).

Cross-References

Suretyship, Title 28, ch. 11, part 4.

39-3-704. Exception. The provisions of this part do not apply to any resident contractor who presents to the commissioner a financial statement certified by a licensed certified public accountant attesting to a net worth of the contractor in excess of $50,000.

History: En. 41-2504 by Sec. 4, Ch. 208, L. 1975; R.C.M. 1947, 41-2704(1).

39-3-705. Suit on bond. Any employee employed by a contractor may bring an action on the surety bond in his own name for unpaid wages and fringe benefits.

History: En. 41-2503 by Sec. 3, Ch. 208, L. 1975; R.C.M. 1947, 41-2703.

39-3-706. Liability of person contracting with contractor for failure to require bond. Any person contracting with a contractor who fails to require the contractor to acquire the surety bond provided for in 39-3-703(1) is liable to the employees of that contractor for their wages and fringe benefits on that particular job.

History: En. 41-2502 by Sec. 2, Ch. 208, L. 1975; R.C.M. 1947, 41-2702(2).

CHAPTER 4

HOURS OF LABOR IN CERTAIN EMPLOYMENTS

Part 1 — Hours of Labor — Penalties and Liability for Violations Thereof

39-4-101. Hoisting engineers.
39-4-102. Drivers and attendants of motor buses.
39-4-103. Underground miners and smeltermen.
39-4-104. Strip mining.
39-4-105. Retail stores.
39-4-106. Telephone operators.
39-4-107. State and municipal governments, school districts, mines, mills, and smelters.
39-4-108. Repealed.
39-4-109. Cement plants and quarries.
39-4-110. Sugar refineries.
39-4-111. Restaurants.
39-4-112. Persons employed about public amusements.

Part 1

Hours of Labor — Penalties and Liability for Violations Thereof

Part Cross-References

Eight-hour maximum workday, Art. XII, sec. 2, Mont. Const.

39-4-101. Hoisting engineers. (1) It shall be unlawful for any person or persons, company, or corporation to operate or handle or to induce, persuade, or prevail upon any person or persons to operate or handle for more than 8 hours in 24 hours of each day any hoisting engine at or in any mine.

(2) This section shall apply only to such plants as are in continuous operation or are operated 16 or more hours in 24 hours of each day or at or in any mine where said hoisting engine develops 15 or more horsepower or at or in any mine wherein there are 15 or more men employed underground in 24 hours of each day. However, the provisions of this section shall not apply to any person or persons operating any hoisting engine more than 8 hours in each 24 hours for the purpose of relieving another employee in case of sickness or other unforeseen cause or causes.

(3) Any person or persons, company, or corporation who shall violate any of the provisions of this section shall upon conviction be punished by a fine of not less than $10 or more than $100. Each and every day that such person or persons, company, or corporation may continue to violate any of the provisions of this section shall be considered a separate and distinct offense and shall be punishable as such.

History: (1), (2)En. Sec. 1, Ch. 53, L. 1903; re-en. Sec. 1734, Rev. C. 1907; re-en. Sec. 3068, R.C.M. 1921; re-en. Sec. 3068, R.C.M. 1935; Sec. 41-1101, R.C.M. 1947; (3)En. Sec. 2, Ch. 53, L. 1903; re-en. Sec. 1735, Rev. C. 1907; re-en. Sec. 3069, R.C.M. 1921; re-en. Sec. 3069, R.C.M. 1935; Sec. 41-1102, R.C.M. 1947; R.C.M. 1947, 41-1101, 41-1102.

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

39-4-102. Drivers and attendants of motor buses. (1) Drivers or attendants of motor buses employed in the state may not be employed for more than 8 hours in any 24-hour period. Drivers or attendants of motor buses must be allowed a rest of at least 12 hours between the completion of their services in any 24-hour period and the beginning of their services in the succeeding 24-hour period. In computing the number of hours of employment made by the provisions of this section, evidence may be introduced showing that part of such time is consumed prior to entry within the state.

(2) The provisions of this section do not apply to drivers or attendants employed by a city, town, county, or political subdivision thereof.

(3) The provisions of this section do not apply when life is in danger or property is in imminent danger of destruction; or in case of delay due to accident or impassable roads, abnormal road conditions, or snow blockades; or when mails for the drivers or attendants are delayed.

(4) "Attendant", for the purpose of this section, is defined as any employee engaged for a portion of a day driving or repairing a motor bus and who is required to remain on the vehicle as a relief driver or mechanic for time in excess of the 8-hour period for which he is rightly employed.

(5) Any employer or supervisor in charge of employees who requires a driver or attendant as above defined to labor contrary to the provisions of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $100 or more than $600 or by imprisonment of not less than 30 days or more than 7 months or both such fine and imprisonment.

(6) All motor bus companies operating lines in this state are liable in damage for all injuries to the person resulting from the violation of the provisions of this section.

History: En. Secs. 1, 2, 3, Ch. 76, L. 1935; re-en. Secs. 3069.1, 3069.2, 3069.3, R.C.M. 1935; R.C.M. 1947, 41-1103, 41-1104, 41-1105; amd. Sec. 1, Ch. 126, L. 1979; amd. Sec. 20, Ch. 397, L. 1979.

Cross-References

"Misdemeanor" defined, 45-2-101.

Classification of offenses, 45-1-201.

39-4-103. Underground miners and sneltermen. (1) The period of employment of workers in all underground mines or workings, including railroad or other tunnels, is 8 hours per day, except in cases of emergency when life and property are in imminent danger.

(2) The period of employment of workers in smelters, stamp mills, sampling works, concentrators, and all other institutions for the reduction of ores and refining of ores or metals is 8 hours per day, except in cases of emergency where life or property is in imminent danger.

(3) Any person, corporation, agent, manager, or employer who violates any of the provisions of this section is guilty of a misdemeanor and upon conviction thereof for each offense is subject to a fine of not less than $100 or more than $600 or by imprisonment in the county jail for a period of not less than 1 month or more than 7 months or by both such fine and imprisonment.

History: (1)En. Sec. 1, p. 62, L. 1901; re-en. Sec. 1736, Rev. C. 1907; amd. Sec. 1, Ch. 21, L. 1911; re-en. Sec. 3071, R.C.M. 1921; re-en. Sec. 3071, R.C.M. 1935; Sec. 41-1107, R.C.M. 1947; (2)En. Sec. 2, p. 63, L. 1901; re-en. Sec. 1737, Rev. C. 1907; re-en. Sec. 3072, R.C.M. 1921; re-en. Sec. 3072, R.C.M. 1935; Sec. 41-1108, R.C.M. 1947; (3)En. Sec. 3, p. 63, L. 1901; re-en. Sec. 1738, Rev. C. 1907; re-en. Sec. 3073, R.C.M. 1921; amd. Sec. 1, Ch. 116,

L. 1929; re-en. Sec. 3073, R.C.M. 1935; Sec. 41-1109, R.C.M. 1947; R.C.M. 1947, 41-1107, 41-1108, 41-1109; amd. Sec. 21, Ch. 397, L. 1979.

Cross-References
Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 3.
Classification of offenses, 45-1-201.
"Misdemeanor" defined, 45-2-101.

39-4-104. Strip mining. (1) For the purpose of this section, "strip mining" is defined as the removal of the overburden and coal or other materials from the ground and all of the operations pertaining thereto, without the necessity of providing timbers for the holding of said ground in place.

(2) A period of not more than 8 hours will constitute a day's labor of all employees working in strip mining, except in cases of emergencies for the protection of life or property when same is in danger.

(3) Any person, company, corporation, or lessee of the same who shall violate the provisions of this section shall upon conviction be punished by a fine of not less than $50 or more than $600 or by imprisonment of not less than 30 days or more than 7 months or both such fine and imprisonment. Each and every day that such person, company, corporation, or lessee may continue to violate the provisions of this section shall be considered a separate and distinct offense and shall be punished as such.

History: En. Secs. 1, 2, 3, Ch. 76, L. 1933; re-en. Secs. 3546.7, 3546.8, 3546.9, R.C.M. 1935; R.C.M. 1947, 41-1110, 41-1111, 41-1112.

Cross-References
Classification of offenses, 45-1-201.
"Misdemeanor" defined, 45-2-101.

39-4-105. Retail stores. (1) A period of 8 hours shall constitute a day's work and a period of not to exceed 48 hours shall constitute a week's work in all cities and towns having a population of 2,500 or over for all persons employed in retail stores and in all leased businesses where the lessor dictates the price, kind of merchandise that is sold, and the hours and conditions of operation of the business; all persons employed in delivering goods sold in such stores; all persons employed in wholesale warehouses used for supplying retail establishments with goods; and all persons employed in delivering goods to retail establishments from such wholesale warehouses.

(2) The provisions of this section shall not apply to registered pharmacists or assistant pharmacists.

(3) Any person, corporation, agent, manager, or employer who shall violate any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $50 or more than $600 or by imprisonment in the county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment.

History: (1)En. Sec. 1, Ch. 8, Ex. L. 1933; re-en. Sec. 3073.1, R.C.M. 1935; Sec. 41-1113, R.C.M. 1947; (2)En. Sec. 3, Ch. 8, Ex. L. 1933; re-en. Sec. 3073.3, R.C.M. 1935; Sec. 41-1115, R.C.M. 1947; (3)En. Sec. 2, Ch. 8, Ex. L. 1933; re-en. Sec. 3073.2, R.C.M. 1935; Sec. 41-1114, R.C.M. 1947; R.C.M. 1947, 41-1113, 41-1114, 41-1115.

Cross-References
Classification of offenses, 45-1-201.
"Misdemeanor" defined, 45-2-101.

39-4-106. Telephone operators. (1) On all lines of public telephones operated in whole or in part within this state, it shall hereafter be unlawful for any owner, lessee, company, or corporation to hire or employ any operator or operators, other person or persons to run or operate a telephone board or boards for more than 9 hours in 24 hours in cities or towns having a population of 3,000 inhabitants or over.

(2) The provisions of this section shall not apply to any person or persons, operator or operators operating any telephone board or boards more than 9 hours in each 24 for the purpose of relieving another employee in case of sickness or other unforeseen cause or causes.

(3) Any owner, lessee, company, or corporation who shall violate any of the provisions of this section shall upon conviction be punished by a fine of not less than $100 or more than $500. Each and every day that such owner, lessee, company, or corporation may continue to violate any of the provisions of this section shall be considered a separate and distinct offense and shall be punished as such.

History: (1), (2)En. Sec. 1, Ch. 75, L. 1909; re-en. Sec. 3074, R.C.M. 1921; re-en. Sec. 3074, R.C.M. 1935; Sec. 41-1116, R.C.M. 1947; (3)En. Sec. 2, Ch. 75, L. 1909; re-en. Sec. 3075, R.C.M. 1921; re-en. Sec. 3075, R.C.M. 1935; Sec. 41-1117, R.C.M. 1947; R.C.M. 1947, 41-1116, 41-1117.

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

39-4-107. State and municipal governments, school districts, mines, mills, and smelters. (1) A period of 8 hours constitutes a day's work in all works and undertakings carried on or aided by any municipal or county government, the state government, or a first-class school district, and on all contracts let by them, and for all janitors (except in courthouses of sixth- and seventh-class counties), engineers, firefighters, caretakers, custodians, and laborers employed in or about any buildings, works, or grounds used or occupied for any purpose by such municipal, county, or state government or first-class school district. A period of 8 hours constitutes a day's work in mills and smelters for the treatment of ores, in underground mines, and in the washing, reducing, and treatment of coal. This subsection does not apply in the event of an emergency when life or property is in imminent danger or to the situations specified in subsections (3) and (4).

(2) The provisions of subsection (1) do not apply to firefighters who are working a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative.

(3) In counties where regular road and bridge departments are maintained, the county commissioners may, with the approval of the employees or their duly constituted representative, establish a 40-hour workweek consisting of 4 consecutive 10-hour days. No employee may be required to work in excess of 8 hours in any one workday if he prefers not to.

(4) In municipal and county governments, the employer and employee may agree to a workday of more than 8 hours and to a 7-day, 40-hour work period:

(a) through a collective bargaining agreement when a collective bargaining unit represents the employee; or

(b) by the mutual agreement of the employer and employee when no bargaining unit is recognized.

History: (1) thru (3)En. Sec. 1, Ch. 50, L. 1905; amd. Sec. 1, Ch. 108, L. 1907; re-en. Sec. 1739, Rev. C. 1907; amd. Sec. 1, Ch. 30, L. 1917; re-en. Sec. 3079, R.C.M. 1921; Cal.

Pol. C. Secs. 3244, 3245; amd. Sec. 2, Ch. 116, L. 1929; re-en. Sec. 3079, R.C.M. 1935; amd. Sec. 1, Ch. 135, L. 1943; amd. Sec. 1, Ch. 244, L. 1957; amd. Sec. 1, Ch. 395, L. 1975; Sec. 41-1121, R.C.M. 1947; (4)En. Sec. 2, Ch. 50, L. 1905; amd. Sec. 2, Ch. 108, L. 1907; re-en. Sec. 1740, Rev. C. 1907; re-en. Sec. 3080, R.C.M. 1921; amd. Sec. 3, Ch. 116, L. 1929; re-en. Sec. 3080, R.C.M. 1935; Sec. 41-1122, R.C.M. 1947; R.C.M. 1947, 41-1121, 41-1122; amd. Sec. 22, Ch. 397, L. 1979; amd. Sec. 2, Ch. 375, L. 1983; amd. Sec. 2, Ch. 640, L. 1983.

Cross-References

Labor — hours of employment, Art. XII, sec. 2, Mont. Const.

39-4-108. Repealed. Sec. 1, Ch. 381, L. 1979.

History: (1), (2)En. Sec. 1, Ch. 5, L. 1907; Sec. 1741, Rev. C. 1907; re-en. Sec. 3081, R.C.M. 1921; re-en. Sec. 3081, R.C.M. 1935; amd. Sec. 1, Ch. 206, L. 1969; Sec. 41-1123, R.C.M. 1947; (3)En. Sec. 3, Ch. 5, L. 1907; Sec. 1743, Rev. C. 1907; re-en. Sec. 3083, R.C.M. 1921; re-en. Sec. 3083, R.C.M. 1935; Sec. 41-1125, R.C.M. 1947; (4), (5)En. Sec. 2, Ch. 5, L. 1907; Sec. 1742, Rev. C. 1907; re-en. Sec. 3082, R.C.M. 1921; re-en. Sec. 3082, R.C.M. 1935; Sec. 41-1124, R.C.M. 1947; R.C.M. 1947, 41-1123, 41-1124, 41-1125; amd. Sec. 23, Ch. 397, L. 1979.

39-4-109. Cement plants and quarries. (1) A period of 8 hours shall constitute a day's work, except in cases of emergency where life and property are in imminent danger, for all persons employed in or about cement plants and at quarries.

(2) Any person, corporation, agent, manager, or employer who shall violate any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $50 or more than $600 or by imprisonment in the county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment.

History: (1)En. Sec. 1, Ch. 77, L. 1933; re-en. Sec. 3083.1, R.C.M. 1935; Sec. 41-1126, R.C.M. 1947; (2)En. Sec. 2, Ch. 77, L. 1933; re-en. Sec. 3083.2, R.C.M. 1935; Sec. 41-1127, R.C.M. 1947; R.C.M. 1947, 41-1126, 41-1127; amd. Sec. 1, Ch. 281, L. 1985.

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

39-4-110. Sugar refineries. (1) A period of not to exceed 8 hours constitutes a day's work for all persons employed in or about sugar refineries, except in a case of emergency when life or property is in danger.

(2) The provisions of this section do not apply to beet receiving station employees or superintendents, master mechanics, or beet-end, sugar-end, and Steffan house foremen.

(3) Any person, corporation, agent, manager, or employer who violates the provisions of this section is guilty of a misdemeanor and upon conviction thereof is punishable by a fine of not less than $50 or more than $600 or by imprisonment in the county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment.

History: En. Secs. 1, 2, 3, Ch. 90, L. 1933; re-en. Secs. 3083.3, 3083.4, 3083.5, R.C.M. 1935; R.C.M. 1947, 41-1128, 41-1129, 41-1130; amd. Sec. 24, Ch. 397, L. 1979.

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

39-4-111. Restaurants. (1) A period of not more than 8 hours shall constitute a day's work, and a period of not to exceed 48 hours shall constitute a week's work for persons employed in or about restaurants, cafes, lunch counters, and other commercial eating establishments. The hours of work must be so arranged that persons employed in or about restaurants, cafes, lunch counters, and other commercial eating establishments shall not be on duty more than 8 hours in the aggregate of any 12 consecutive hours. Such persons shall have at least 12 consecutive hours off duty.

(2) The provisions of this section shall not apply to any person or persons working more than 8 hours during any 12 consecutive hours or more than 48 hours during any week for the purpose of relieving another employee in case of sickness or where the health of the public is imperiled, where life and property are in imminent danger, or for other unforeseen cause or causes.

(3) Any person, corporation, manager, agent, or employer who shall violate any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $25 or more than $50 or by imprisonment in the county jail for not less than 15 days or more than 60 days or by both such fine and imprisonment.

History: (1), (2)En. Sec. 1, Ch. 199, L. 1939; Sec. 41-1131, R.C.M. 1947; (3)En. Sec. 2, Ch. 199, L. 1939; Sec. 41-1132, R.C.M. 1947; R.C.M. 1947, 41-1131, 41-1132.

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

39-4-112. Persons employed about public amusements. (1) A period of not to exceed 8 hours shall constitute a day's work and a period of not to exceed 48 hours shall constitute a week's work for persons employed or working in or participating in and about any carnival, circus, derby show, walkathon, marathon dance, marathon race, marathon walk, or other endurance contest by whatever name it may be called within the state. The hours of work must be so arranged that persons employed in or participating or contesting in such an exhibition, show, or contest shall not be on duty more than 8 hours in the aggregate of any 12 consecutive hours. Such persons shall have at least 12 consecutive hours off duty.

(2) The provisions of this section shall not apply to any traveling circus or carnival which does not remain in any one county of the state for a period of more than 3 days and shall not apply to any person or persons working more than 8 hours in each 12 hours for the purpose of relieving another employee in case of sickness or where a breakdown in machinery occurs or where life or property is in imminent danger.

(3) Any person, corporation, agent, manager, employer, employee, contestant, or participant who shall violate the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished for the first offense by a fine of not less than $50. For a second offense, he shall be punished by a fine of not less than $100 or more than $500 or by imprisonment in the county jail for not less than 90 days or more than 6 months or by both such fine and imprisonment. For a third or subsequent offense, he shall be punished by a fine of $500 and imprisonment in the county jail for a term of 6 months. Each day's violation of this section shall constitute a separate offense within the meaning of this section.

History: (1), (2)En. Sec. 1, Ch. 21, L. 1941; Sec. 41-1133, R.C.M. 1947; (3)En. Sec. 2, Ch. 21, L. 1941; Sec. 41-1134, R.C.M. 1947; R.C.M. 1947, 41-1133, 41-1134.

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

CHAPTER 5

THE EMPLOYMENT AGENCY ACT

Part 1 — General Provisions

39-5-101. Short title.
39-5-102. Definitions.
39-5-103. Administration — rules.
39-5-104. Provisions of chapter exclusive.
39-5-105. Power of political subdivision to license for revenue purposes not affected.

Part 2 — Licensing

39-5-201. Conducting business without license a misdemeanor.
39-5-202. Application for license or renewal.
39-5-203. Grounds for denial, suspension, or revocation of license.
39-5-204. License fees.
39-5-205. Disposition of license fees.
39-5-206. Bond of licensee.
39-5-207. License to be conspicuously displayed.
39-5-208. Expiration of license.
39-5-209. Consent required prior to transfer of license or connection of additional persons with business.

Part 3 — Contracts, Fees, and General Operation of Business

39-5-301. Records to be kept.
39-5-302. Applicant to receive contract — required contents of contract.
39-5-303. Regulation of fees — disapproval of contract.
39-5-304. False or fraudulent advertisement prohibited — disclosure requirements of advertisement.
39-5-305. Agency not to induce employee to quit or employer to discharge.
39-5-306. Agency not to refer applicant where strike or lockout exists.
39-5-307. Agency to reconfirm job opening.
39-5-308. When agency may charge a fee.
39-5-309. Repealed.
39-5-310. Payment of fee when applicant referred by two agencies.
39-5-311. Fees to be returned in certain cases.
39-5-312. Agency not to share fees with employer.

Part 4 — Investigations and Enforcement

39-5-401. Complaints against employment agencies.
39-5-402. Department to forward complaints to agency involved or agency association.
39-5-403. Referral of violations to prosecuting attorneys — restraining actions.
39-5-404. Written assurance of discontinuance.
39-5-405. Civil penalty for violating court order.
39-5-406. Jurisdiction over nonresidents.

Part 1

General Provisions

39-5-101. Short title. This chapter shall be known and cited as "The Employment Agency Act".

History: En. Sec. 1, Ch. 430, L. 1971; R.C.M. 1947, 41-1417.

39-5-102. Definitions. Unless a different meaning is clearly required by the context, the following words and phrases, as used in this chapter, have the following meanings:

(1) "Agents for professional athletes" means any person, firm, association, or corporation conducting a business that consists solely of obtaining, obtaining offers of, and negotiating contracts of employment of professional athletes.

(2) "Applicant", except when used to describe an applicant for an employment agency license, means any person, whether employed or unemployed, seeking or entering into any arrangement for his employment or change of his employment through the medium or service of an employment agency.

(3) "Department" means the department of commerce provided for in 2-15-1801.

(4) "Employer" means any person, firm, corporation, partnership, or association employing or seeking to enter into an arrangement to employ a person through the medium or service of an employment agency.

(5) (a) "Employment agency" is synonymous with "agency" and means any business in which any part of the business's gross or net income is derived from a fee received from applicants and in which any of the following activities are engaged in:

(i) the offering, promising, procuring, or attempting to procure employment for applicants; or

(ii) the giving of information regarding where and from whom employment may be obtained.

(b) In addition, the term "employment agency" means and includes any person, bureau, organization, or school which for profit, by advertisement or otherwise, offers as one of its main objects or purposes to procure employment for any person who pays for its services or which collects tuition or charges for service of any nature where the main object of the person paying the same is to secure employment.

(c) The term "employment agency" does not include labor union organizations, temporary service contractors, proprietary schools, musical booking services, agents for professional athletes, or the Montana state employment agency.

(6) "Fee" means a placement fee. A placement fee is a fee charged by an agency for placement that is the service of referring an applicant to an employer for employment and which results in employment of the applicant. A placement fee does not include a fee charged for a service offered in addition to a placement service.

(7) "Musical booking service" means any person, firm, association, or corporation conducting a business which consists solely of obtaining, obtaining offers of, and negotiating employment for individuals or groups of individuals for musical entertainment purposes.

(8) "Person" includes an individual, a firm, a corporation, a partnership, or an association.

(9) "Temporary service contractors" means any person, firm, association, or corporation conducting a business which consists of employing individuals directly for the purpose of furnishing such individuals on a part-time or temporary basis to others.

History: En. Sec. 2, Ch. 430, L. 1971; R.C.M. 1947, 41-1418; amd. Sec. 1, Ch. 156, L. 1979; amd. Sec. 25, Ch. 397, L. 1979; amd. Sec. 1, Ch. 33, L. 1981; amd. Sec. 1, Ch. 483, L. 1987.

39-5-103. Administration — rules. The department shall administer the provisions of this chapter and shall issue from time to time reasonable rules for enforcing and carrying out the provisions and purposes of this chapter.

History: En. Sec. 7, Ch. 430, L. 1971; R.C.M. 1947, 41-1423(1); amd. Sec. 4, Ch. 483, L. 1987.

Cross-References

"Department" defined, 39-5-102.

39-5-104. Provisions of chapter exclusive. The provisions of this chapter relating to the regulation of private employment agencies shall be exclusive.

History: En. Sec. 22, Ch. 430, L. 1971; R.C.M. 1947, 41-1438(1).

39-5-105. Power of political subdivision to license for revenue purposes not affected. This chapter shall not be construed to affect or reduce the authority of any political subdivision of the state to provide for the licensing of private employment agencies solely for revenue purposes.

History: En. Sec. 22, Ch. 430, L. 1971; R.C.M. 1947, 41-1438(2).

Part 2
Licensing

39-5-201. Conducting business without license a misdemeanor. It shall be a misdemeanor for any person to conduct an employment agency business in this state unless he has an employment agency license issued pursuant to the provisions of this chapter.

History: En. Sec. 8, Ch. 430, L. 1971; R.C.M. 1947, 41-1424.

Cross-References

"Employment agency" defined, 39-5-102.
"Person" defined, 39-5-102.
Classification of offenses, 45-1-201.
"Misdemeanor" defined, 45-2-101.
Penalty for misdemeanor, 46-18-212.

39-5-202. Application for license or renewal. (1) Every applicant for an employment agency license or a renewal thereof shall file with the department a written application stating the name and address of the applicant, the street and number of the building in which the business of the employment agency is to be conducted, the name of the person who is to have the general management of the office, the name under which the business of the office is to be carried on, and whether or not the applicant is pecuniarily interested in the business to be carried on under the license. The application must be signed by the applicant and sworn to before a notary public and must identify anyone holding over 20% interest in the agency.

(2) If the applicant is a corporation, the application must state the names and addresses of the officers and directors of the corporation and must be signed and sworn to by the president and secretary thereof before a notary public.

(3) If the applicant is a partnership, the application must also state the names and addresses of all partners therein and must be signed and sworn to by all of them before a notary public.

(4) The application must also state whether or not the applicant, at the time of making the application or at any previous time, has been engaged in or interested in or employed by anyone engaged in the business of an employment agency.

(5) All applications for employment agency licenses must be accompanied by a copy of the form of contract to be used between the agency and the applicant.

History: En. Sec. 10, Ch. 430, L. 1971; R.C.M. 1947, 41-1426; amd. Sec. 26, Ch. 397, L. 1979; amd. Sec. 4, Ch. 483, L. 1987.

Cross-References

"Applicant" defined, 39-5-102.
"Department" defined, 39-5-102.
"Employment agency" defined, 39-5-102.
"Person" defined, 39-5-102.

39-5-203. Grounds for denial, suspension, or revocation of license. The department may by order deny, suspend, or revoke the license of any employment agency if he finds that the applicant or licensee:

(1) was previously the holder of a license issued under this chapter which was revoked for cause and never reissued by the department or which license was suspended for cause and the terms of the suspension have not been fulfilled;

(2) has been found guilty of any felony within the past 5 years involving moral turpitude or for any misdemeanor concerning fraud or conversion or suffering any judgment in any civil action involving willful fraud, misrepresentation, or conversion;

(3) has made a false statement of a material fact in his application or in any data attached thereto;

(4) has violated any provisions of this chapter or failed to comply with any rule issued by the department pursuant to this chapter.

History: En. Sec. 13, Ch. 430, L. 1971; R.C.M. 1947, 41-1429; amd. Sec. 4, Ch. 483, L. 1987.

Cross-References

"Applicant" defined, 39-5-102.
"Department" defined, 39-5-102.
"Employment agency" defined, 39-5-102.

39-5-204. License fees. The following fees shall be charged by the department to those parties licensed as employment agencies:

(1) original applications, $100;
(2) renewal per year, $100;
(3) branch license, both original and renewal, $100;
(4) transfer of license, $25;
(5) approval of amended or new contracts, $15 per contract.

History: En. Sec. 14, Ch. 430, L. 1971; R.C.M. 1947, 41-1430; amd. Sec. 4, Ch. 483, L. 1987.

Cross-References

"Department" defined, 39-5-102.

39-5-205. Disposition of license fees. All license fees shall revert to department of commerce to be used for administration of this chapter.

History: En. Sec. 22, Ch. 430, L. 1971; R.C.M. 1947, 41-1438(3); amd. Sec. 5, Ch. 483, L. 1987.

39-5-206. Bond of licensee. Before conducting any business as an employment agency, each licensee shall file with the department a surety bond in the sum of $2,000 running to the state of Montana for the benefit of any person injured or damaged as a result of any violation by the licensee or his agent of any of the provisions of this chapter or of any rule adopted by the department pursuant to 39-5-103.

History: En. Sec. 9, Ch. 430, L. 1971; amd. Sec. 3, Ch. 237, L. 1975; R.C.M. 1947, 41-1425; amd. Sec. 4, Ch. 483, L. 1987.

Cross-References

Suretyship, Title 28, ch. 11, part 4.
"Department" defined, 39-5-102.
"Employment agency" defined, 39-5-102.
"Person" defined, 39-5-102.

39-5-207. License to be conspicuously displayed. Every license or a verified copy thereof shall be displayed in a conspicuous place in each office of the employment agency.

History: En. Sec. 17, Ch. 430, L. 1971; R.C.M. 1947, 41-1433(1).

Cross-References

"Employment agency" defined, 39-5-102.

39-5-208. Expiration of license. An employment agency license shall expire June 30.

History: En. Sec. 11, Ch. 430, L. 1971; R.C.M. 1947, 41-1427.

Cross-References

"Employment agency" defined, 39-5-102.

39-5-209. Consent required prior to transfer of license or connection of additional persons with business. No license granted pursuant to this chapter shall be transferable without the consent of the department. No employment agency shall permit any person not mentioned in the license application to become connected with the business as an owner, member, officer, or director without the consent of the department. Consent may be withheld for any reason for which an original application for a license might have been rejected if the person in question had been mentioned therein.

History: En. Sec. 12, Ch. 430, L. 1971; R.C.M. 1947, 41-1428; amd. Sec. 4, Ch. 483, L. 1987.

Cross-References

"Department" defined, 39-5-102.
"Employment agency" defined, 39-5-102.
"Person" defined, 39-5-102.

Part 3

Contracts, Fees, and General Operation of Business

39-5-301. Records to be kept. (1) Each employment agency shall keep records of all services rendered employers and applicants. These records shall contain the name and address of the employer by whom the services were solicited, the name and address of the applicant, kind of position ordered by the employer, kind of position accepted by the applicant, probable duration of the employment, if known, rate of wage or salary to be paid the applicant, amount of the employment agency's fee, dates and amounts of refund, if any, and reason for such refund, and the contract agreed to between the agency and applicant.

(2) Unless otherwise provided by rules adopted by the department, such records shall be maintained for a period of 3 years from the date in which they are made.

History: **En. Sec. 3, Ch. 430, L. 1971; R.C.M. 1947, 41-1419(part); amd. Sec. 4, Ch. 483, L. 1987.**

Cross-References

"Department" defined, 39-5-102.

"Employer" defined, 39-5-102.

"Employment agency" defined, 39-5-102.

"Person" defined, 39-5-102.

39-5-302. Applicant to receive contract — required contents of contract. An employment agency shall provide each applicant with a copy of the contract between the applicant and employment agency. Such contract shall contain the following:

(1) the name, address, and telephone number of the employment agency;

(2) trade name, if any;

(3) the date of the contract;

(4) the name of the applicant;

(5) the amount of the fee to be charged the applicant;

(6) a notice in eight-point boldface type or larger directly above the space reserved in the contract for the signature of the buyer. The caption, "NOTICE TO APPLICANT — READ BEFORE SIGNING" shall precede the body of the notice and shall be in ten-point boldface type or larger. The notice shall read as follows: "This is a contract. If you accept employment with any employer through (name of employment agency), you will be liable for the payment of the fee as set out above. Do not sign this contract before you read it or if any spaces intended for the agreed terms are left blank. You are entitled to a copy of this contract at the time you sign it."

History: **En. Sec. 4, Ch. 430, L. 1971; R.C.M. 1947, 41-1420.**

Cross-References

Contracts and their interpretation, Title 28, ch. 2 and 3.

"Applicant" defined, 39-5-102.

"Employer" defined, 39-5-102.

"Employment agency" defined, 39-5-102.

39-5-303. Regulation of fees — disapproval of contract. (1) The fee charged by any employment agency for its services will be a percentage of the first full month's gross income of any person placed in employment, as provided for in the agency's fee schedule. The percentage charged must be determined by the agency and is not subject to disapproval by the department.

(2) No applicant may be required to pay more than one fee per placement.

(3) No employment agency may impose a fee in excess of that agreed to in writing.

(4) A fee schedule must be printed on all contracts, and a copy of the contract containing the fee schedule must be given to each applicant prior to any discussion of available employment.

(5) Prior to using any contract in the transaction of its business with applicants, each employment agency shall obtain the department's approval for the use of such contract. The department shall disapprove any proposed contract which either tends to be or is vague, deceitful, or misrepresentative.

History: **En. Sec. 5, Ch. 430, L. 1971; R.C.M. 1947, 41-1421(part); amd. Sec. 1, Ch. 365, L. 1981; amd. Sec. 1, Ch. 339, L. 1983; amd. Sec. 4, Ch. 483, L. 1987.**

Cross-References

"Applicant" defined, 39-5-102.
"Department" defined, 39-5-102.
"Employment agency" defined, 39-5-102.

39-5-304. False or fraudulent advertisement prohibited — disclosure requirements of advertisement. No employment agency shall knowingly cause to be printed or published a false or fraudulent notice or advertisement for obtaining work or employment. All advertising by a licensee shall signify that it is an employment agency solicitation.

History: **En. Sec. 17, Ch. 430, L. 1971; R.C.M. 1947, 41-1433(4).**

Cross-References

"Employment agency" defined, 39-5-102.

39-5-305. Agency not to induce employee to quit or employer to discharge. No licensee or agent of the licensee shall solicit, persuade, or induce an employee to leave any employment in which the licensee or agent of the licensee has placed the employee, nor shall any licensee or agent of the licensee persuade or induce or solicit any employer to discharge any employee.

History: **En. Sec. 17, Ch. 430, L. 1971; R.C.M. 1947, 41-1433(3).**

Cross-References

"Employer" defined, 39-5-102.

39-5-306. Agency not to refer applicant where strike or lockout exists. No licensee shall refer an applicant to an employer where there is a strike or lockout at the place of proposed employment if such licensee has knowledge that such condition exists.

History: **En. Sec. 17, Ch. 430, L. 1971; R.C.M. 1947, 41-1433(5).**

Cross-References

"Applicant" defined, 39-5-102.
"Employer" defined, 39-5-102.
Strikebreaker prohibitions, Title 39, ch. 33, part 2.

39-5-307. Agency to reconfirm job opening. Prior to referring an applicant with the prospective employer for employment, the employment agency shall reconfirm that the job opening does still exist and document this on the job order.

History: **En. Sec. 6, Ch. 430, L. 1971; amd. Sec. 2, Ch. 237, L. 1975; R.C.M. 1947, 41-1422.**

Cross-References

"Applicant" defined, 39-5-102.
"Employer" defined, 39-5-102.
"Employment agency" defined, 39-5-102.

39-5-308. When agency may charge a fee. (1) No employment agency shall charge or accept a fee from an applicant without complying with the terms of a written contract as specified in 39-5-302 and then only after such agency has been responsible for referring such job applicant to an employer or such employer to a job applicant and where as a result thereof such job applicant has been employed by such employer.

(2) No fee shall be solicited or accepted as an application or registration fee by any employment agency solely for the purpose of being registered as an applicant for employment.

(3) No fee shall be charged an applicant referred to a state employment office or any organization having exclusive hiring hall procedures as provided in the National Labor Relations Act.

History: (1)En. Sec. 15, Ch. 430, L. 1971; Sec. 41-1431, R.C.M. 1947; (2)En. Sec. 17, Ch. 430, L. 1971; Sec. 41-1433, R.C.M. 1947; (3)En. Sec. 5, Ch. 430, L. 1971; Sec. 41-1421, R.C.M. 1947; R.C.M. 1947, 41-1421(part), 41-1431, 41-1433(2); amd. Sec. 2, Ch. 483, L. 1987.

Cross-References

"Applicant" defined, 39-5-102.
"Employer" defined, 39-5-102.
"Employment agency" defined, 39-5-102.

39-5-309. Repealed. Sec. 4, Ch. 365, L. 1981.

History: En. 41-1431.1 by Sec. 1, Ch. 237, L. 1975; R.C.M. 1947, 41-1431.1(1), (2).

39-5-310. Payment of fee when applicant referred by two agencies. When an applicant is referred to the same position by two employment agencies, the fee shall be paid to the agency that first contacted the applicant concerning the specific opening, provided that such agency has given the name of the employer to the applicant and has arranged an interview or submitted a resume to the employer within 10 days of such contact with the applicant.

History: En. Sec. 17, Ch. 430, L. 1971; R.C.M. 1947, 41-1433(7); amd. Sec. 2, Ch. 365, L. 1981.

Cross-References

"Applicant" defined, 39-5-102.
"Employer" defined, 39-5-102.

39-5-311. Fees to be returned in certain cases. (1) Where an applicant for employees or employment who has paid a fee fails to secure or refuses to accept employees or employment, such fee shall be returned in cash within 7 days after demand.

(2) If employment obtained for an applicant ends in less than 100 calendar days from the first day of employment, regardless of the reason, the fee charged by the agency will be reduced by 1% of the fee for each calendar day remaining of the 100 days.

(3) Any employment agency which collects, receives, or retains a fee or other payment contrary to the provisions of this chapter or to the rules adopted pursuant to this chapter shall return the excessive portion of the fee within 7 days after receiving a demand therefor from the department.

History: (1), (2)En. 41-1431.1 by Sec. 1, Ch. 237, L. 1975; Sec. 41-1431.1, R.C.M. 1947; (3)En. Sec. 16, Ch. 430, L. 1971; Sec. 41-1432, R.C.M. 1947; R.C.M. 1947, 41-1431.1(3), 41-1432; amd. Sec. 3, Ch. 365, L. 1981; amd. Sec. 4, Ch. 483, L. 1987.

Cross-References

"Applicant" defined, 39-5-102.
"Department" defined, 39-5-102.
"Employment agency" defined, 39-5-102.

39-5-312. Agency not to share fees with employer. No licensee or agent of a licensee shall directly or indirectly split, divide, or share with an employer any fee, charge, or compensation received from any applicant who has obtained employment with such employer or with any other person connected with the business of such employer.

History: En. Sec. 17, Ch. 430, L. 1971; R.C.M. 1947, 41-1433(6).

Cross-References

"Applicant" defined, 39-5-102.
"Employer" defined, 39-5-102.
"Person" defined, 39-5-102.

Part 4
Investigations and Enforcement

39-5-401. Complaints against employment agencies. Upon receiving a complaint against any employment agency, the department shall forward the complaint to the county attorney having jurisdiction in the matter. The county attorney may request or subpoena any documents related to the complaint.

History: (1), (2)En. Sec. 7, Ch. 430, L. 1971; Sec. 41-1423, R.C.M. 1947; (3)En. Sec. 3, Ch. 430, L. 1971; Sec. 41-1419, R.C.M. 1947; R.C.M. 1947, 41-1419(part), 41-1423(2), (3); amd. Sec. 3, Ch. 483, L. 1987.

Cross-References

Depositions and discovery, Rules 26 through 37, M.R.Civ.P. (see Title 25, ch. 20).

Subpoenas generally, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2.

"Department" defined, 39-5-102.

"Employment agency" defined, 39-5-102.

39-5-402. Department to forward complaints to agency involved or agency association. Any complaints filed with the department of commerce shall be sent to that private employment agency involved or to the Montana private employment agency association.

History: En. 41-1434.1 by Sec. 4, Ch. 237, L. 1975; R.C.M. 1947, 41-1434.1; amd. Sec. 5, Ch. 483, L. 1987.

Cross-References

"Employment agency" defined, 39-5-102.

39-5-403. Referral of violations to prosecuting attorneys — restraining actions. The department may refer such evidence as may be available to him concerning violations of this chapter or of any rule adopted hereunder to the attorney general or the county attorney of the county wherein the alleged violation arose who may, in his discretion, with or without such a reference, in addition to any other action he might commence, bring an action in the name of the state against any person to restrain and prevent the doing of any act or practice prohibited by this chapter.

History: En. Sec. 18, Ch. 430, L. 1971; R.C.M. 1947, 41-1434; amd. Sec. 27, Ch. 397, L. 1979; amd. Sec. 4, Ch. 483, L. 1987.

Cross-References

Injunctions, Title 27, ch. 19.

"Department" defined, 39-5-102.

"Person" defined, 39-5-102.

39-5-404. Written assurance of discontinuance. In the enforcement of this chapter, the attorney general or the county attorney may accept an assurance of discontinuance from any person deemed in violation of any provisions of this chapter. Any such assurance shall be in writing and shall be filed with and subject to the approval of the district court of the county in which the alleged violator resides or has his principal place of business.

History: En. Sec. 19, Ch. 430, L. 1971; R.C.M. 1947, 41-1435; amd. Sec. 28, Ch. 397, L. 1979.

Cross-References

"Person" defined, 39-5-102.

39-5-405. Civil penalty for violating court order. Any person who violates the terms of any court order or temporary or permanent injunction issued pursuant to this chapter shall forfeit and pay a civil penalty of not more than $2,000. For the purpose of this section, the court issuing any injunction shall retain continuing jurisdiction and in such cases the attorney general or the county attorney acting in the name of the state may petition for the recovery of civil penalties.

History: **En. Sec. 20, Ch. 430, L. 1971; R.C.M. 1947, 41-1436; amd. Sec. 29, Ch. 397, L. 1979.**

Cross-References

Injunctions, Title 27, ch. 19.

"Person" defined, 39-5-102.

39-5-406. Jurisdiction over nonresidents. Personal service of any process in an action under this chapter may be made upon any person outside the state if such person has engaged in conduct in violation of this chapter, which conduct has had impact in this state which this chapter reprehends. Such person shall be deemed to have thereby submitted himself to the jurisdiction of the courts of this state.

History: **En. Sec. 21, Ch. 430, L. 1971; R.C.M. 1947, 41-1437.**

Cross-References

Service outside the state, Rule 4D(3), M.R.Civ.P. (see Title 25, ch. 20).

"Person" defined, 39-5-102.

CHAPTER 6

APPRENTICESHIP

Part 1 — General Provisions

39-6-101. Duties of department.
39-6-102. Powers of department.
39-6-103. Responsibilities of state and local boards responsible for vocational education.
39-6-104. Local and state joint apprenticeship committees.
39-6-105. Apprenticeship agreements.
39-6-106. Contents of apprenticeship agreements — credit for prior training or experience.
39-6-107. Provisions of chapter voluntary.

Part 1

General Provisions

39-6-101. Duties of department. (1) The department of labor and industry shall:

(a) encourage and promote the making of apprenticeship agreements conforming to the standards established by or in accordance with this chapter;

(b) register such apprenticeship agreements as are in the best interests of the apprenticeship and conform to the standards established by or in accordance with this chapter;

(c) keep a record of apprenticeship agreements and, upon performance thereof, issue certificates of completion of apprenticeship;

(d) terminate or cancel any apprenticeship agreements in accordance with the provisions of such agreements; and

(e) provide assistance for the development of on-the-job training programs in nonapprenticeable occupations;

(f) establish standards for apprenticeship agreements in conformity with the provisions of this chapter;

(g) issue such rules as may be necessary to carry out the intent and purposes of this chapter; and

(h) perform such other duties as may be required by federal regulations, provided that such federal regulations are not in conflict with this chapter.

(2) Not less often than once every 2 years, the department shall make a report of its activities and findings to the governor and, as provided in 5-11-210, to the legislature. The department shall also make the report available to the public.

History: Ap.p. Sec. 2, Ch. 149, L. 1941; amd. Sec. 2, Ch. 183, L. 1957; amd. Sec. 2, Ch. 160, L. 1963; Sec. 41-1202, R.C.M. 1947; Ap.p. Sec. 1, Ch. 149, L. 1941; amd. Sec. 1, Ch. 99, L. 1947; amd. Sec. 1, Ch. 183, L. 1957; amd. Sec. 1, Ch. 160, L. 1963; amd. Sec. 16, Ch. 439, L. 1975; Sec. 41-1201, R.C.M. 1947; R.C.M. 1947, 41-1201(b), 41-1202(1) thru (4); amd. Sec. 1, Ch. 272, L. 1979; amd. Sec. 33, Ch. 112, L. 1991.

39-6-102. Powers of department. (1) The department of labor and industry may accept from the federal government or any agency thereof or from any state agency any funds made available to carry out purposes within the scope of the activities and purposes of the department under this chapter and to use such funds as said department may direct for the purposes for which said funds are made available.

(2) The department may act to bring about the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or in accordance with the established trade procedure.

History: (1)En. Sec. 1, Ch. 149, L. 1941; amd. Sec. 1, Ch. 99, L. 1947; amd. Sec. 1, Ch. 183, L. 1957; amd. Sec. 1, Ch. 160, L. 1963; amd. Sec. 16, Ch. 439, L. 1975; Sec. 41-1201, R.C.M. 1947; (2)En. Sec. 2, Ch. 149, L. 1941; amd. Sec. 2, Ch. 183, L. 1957; amd. Sec. 2, Ch. 160, L. 1963; Sec. 41-1202, R.C.M. 1947; R.C.M. 1947, 41-1201(c), 41-1202(part(5)).

Cross-References

Management of federal funds, Title 17, ch. 3, part 1.

39-6-103. Responsibilities of state and local boards responsible for vocational education. Related and supplemental instruction for apprentices, coordination of instruction with job experiences, and the selection and training of teachers and coordinators for such instruction shall be the responsibility of state and local boards responsible for vocational education.

History: En. Sec. 2, Ch. 149, L. 1941; amd. Sec. 2, Ch. 183, L. 1957; amd. Sec. 2, Ch. 160, L. 1963; R.C.M. 1947, 41-1202(part).

Cross-References

Regulation of vocational education, Title 20, ch. 7, part 3.

39-6-104. Local and state joint apprenticeship committees. (1) Local and state joint apprenticeship committees may be approved in any trade or group of trades in cities or trade areas by the department of labor and industry whenever the apprentice training needs of such trade or group of trades justifies such establishment.

(2) Such local or state joint apprenticeship committees shall be composed of an equal number of employer and employee representatives chosen from names submitted by the respective local or state employer and employee organizations in such trade or group of trades. In a trade or group of trades

in which there is no bona fide employer or employee organization, the joint committee shall be composed of persons known to represent the interests of employers and of employees, respectively, or a state joint apprenticeship committee may be approved as or the department may act itself as the joint committee in such trade or group of trades.

(3) Subject to the review of the department and in accordance with the standards established by this chapter and by the department, such committee shall devise standards for apprenticeship agreements and give such aid as may be necessary in their operation in their respective trades and localities.

History: **En. Sec. 3, Ch. 149, L. 1941; R.C.M. 1947, 41-1203.**

39-6-105. Apprenticeship agreements. (1) For the purpose of this chapter, an apprenticeship agreement is:

(a) an individual written agreement between an employer and apprentice;

(b) a written agreement between an employer or an association of employers and an organization of employees describing conditions of employment for apprentices; or

(c) a written statement describing conditions of employment for apprentices in a plant where there is no bona fide employee organization.

(2) All such agreements shall conform to the basic standards and other provisions of this chapter.

History: **En. Sec. 5, Ch. 149, L. 1941; R.C.M. 1947, 41-1205.**

39-6-106. Contents of apprenticeship agreements — credit for prior training or experience. (1) Apprenticeship agreements shall contain:

(a) a statement of the trade or craft to be taught and the required hours for completion of apprenticeship, which must be not less than 2,000 hours of reasonably continuous employment;

(b) a statement of the processes in the trade or craft divisions in which the apprentice is to be taught and the approximate amount of time to be spent at each process;

(c) a statement of the number of hours to be spent by the apprentice in related and supplemental instruction, which is recommended to be 144 hours per year;

(d) a statement that apprentices must be not less than 16 years of age;

(e) a statement of the progressively increasing scale of wages to be paid the apprentice;

(f) provision for a period of probation during which the department of labor and industry must terminate an apprenticeship agreement at the request in writing of any party thereto. After the probationary period, the department may terminate the registration of an apprentice upon agreement of the parties.

(g) provision that the services of the department may be utilized for consultation regarding the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or in accordance with the established trade procedure;

(h) provision that if an employer is unable to fulfill his obligation under the apprenticeship agreement, he may transfer the obligation to another employer if the other employer has been approved as a training facility;

(i) provision for the specification of the ratio of apprentices to journeymen. The department will continue to honor and recognize ratio provisions as established in existing labor/management bargaining agreements or as established by an industry practice.

(j) such additional standards as may be prescribed in accordance with this chapter.

(2) An apprentice who, prior to entering into an agreement, has had training or experience in the trade or craft in which he is employed as an apprentice may be granted full or partial credit for the training or experience on the recommendation of the employer or the joint apprenticeship committee and with the approval of the department.

History: En. Sec. 4, Ch. 149, L. 1941; R.C.M. 1947, 41-1204; amd. Sec. 2, Ch. 272, L. 1979; amd. Sec. 30, Ch. 397, L. 1979.

39-6-107. Provisions of chapter voluntary. The provisions of this chapter shall apply to a person, firm, corporation, or craft only after such person, firm, corporation, or craft has voluntarily elected to conform with its provisions.

History: En. Sec. 6, Ch. 149, L. 1941; R.C.M. 1947, 41-1206.

CHAPTER 7

WOMEN IN EMPLOYMENT
DISPLACED HOMEMAKERS

Part 1 — Duties of Department of Labor and Industry

39-7-101. Legislative policy.
39-7-102. Rules of procedure and practice.
39-7-103. Duties of department.
39-7-104. Department to work in close cooperation with commission on human rights.

Part 2 — Maternity Leave (Repealed and Renumbered. Sec. 2, 3, Ch. 285, L. 1983)

Part 3 — Displaced Homemakers

39-7-301. Short title.
39-7-302. Purpose.
39-7-303. Definitions.
39-7-304. Multipurpose service programs for displaced homemakers — administrators.
39-7-305. Programs to aid displaced homemakers.
39-7-306. Rulemaking duties of commissioner.
39-7-307. Acceptance of funds by administrator of local program.
39-7-308. Evaluation of multipurpose service programs — reports to the commissioner.
39-7-309. Staff of service programs.
39-7-310. Partial funding from local community.

Parts 4 and 5 reserved

Part 6 — Incentive Program — Child Care Assistance

39-7-601. Short title.
39-7-602. Definitions.
39-7-603. Rulemaking authority.
39-7-604. Incentive program.
39-7-605. Child care assistance — eligibility — costs.

39-7-606. Program evaluation.

Part 1
Duties of Department of Labor and Industry

39-7-101. Legislative policy. This part establishes as an affirmative policy of this state within the department of labor and industry procedures which will enable women to contribute to society according to their fullest possible potential.

History: En. Sec. 1, Ch. 466, L. 1973; R.C.M. 1947, 41-2401.

Cross-References

Comparable worth law, 2-18-208, 2-18-209.

Equal pay for equal work, 39-3-104.

Freedom from sex discrimination in employment, 49-1-102, 49-2-303, 49-3-103, 49-3-201 through 49-3-203.

39-7-102. Rules of procedure and practice. The commissioner of the department of labor and industry may issue rules of procedure and practice consistent with the Montana Administrative Procedure Act in order to administer and carry out the purposes of this part.

History: En. Sec. 3, Ch. 466, L. 1973; R.C.M. 1947, 41-2403.

Cross-References

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

39-7-103. Duties of department. The department of labor and industry shall:

(1) conduct studies about the changing employment needs and problems of women in Montana and make recommendations to the governor and the legislature;

(2) direct public attention to critical employment problems confronting women as wives, mothers, homemakers, and workers;

(3) serve as a clearinghouse for information and materials pertinent to programs and services available to assist and advise women on employment and related matters;

(4) cooperate with governmental departments and agencies primarily involved in curbing job discrimination and in the expansion of employment rights and opportunities available to the women of this state;

(5) conduct periodic conferences throughout the state to make women more aware of employment opportunities, programs, and services available to them;

(6) serve as the central, permanent agency for the coordination and evaluation of employment programs and services for women of the state and as a planning agency for the development of those services;

(7) encourage women's organizations and other groups to institute local self-help activities designed to meet women's employment and related needs;

(8) apply for and receive grants, appropriations, or gifts from any federal, state, or local agency, private foundation, or individual to carry out the purposes of this part.

History: En. Sec. 2, Ch. 466, L. 1973; R.C.M. 1947, 41-2402.

39-7-104. Department to work in close cooperation with commission on human rights. It is the intent of the legislature that the functions in the department of labor and industry delineated in this part pertaining to the status of women shall, where appropriate, be performed in close cooperation with the commission on human rights.

History: En. Sec. 2, Ch. 478, L. 1975.

Cross-References

Commission for Human Rights, 2-15-1706, Title 49, ch. 2, part 2.

Part 2

Maternity Leave (Repealed and Renumbered. Sec. 2, 3, Ch. 285, L. 1983)

Part Compiler's Comments

Histories of Repealed Sections:

39-7-201. En. 41-2601 by Sec. 1, Ch. 320, L. 1975; R.C.M. 1947, 41-2601.

39-7-202. En. 41-2605 by Sec. 5, Ch. 320, L. 1975; R.C.M. 1947, 41-2605.

39-7-205. En. 41-2603 by Sec. 3, Ch. 320, L. 1975; R.C.M. 1947, 41-2603(part).

39-7-206. En. 41-2604 by Sec. 4, Ch. 320, L. 1975; R.C.M. 1947, 41-2604.

39-7-207. En. 41-2603 by Sec. 3, Ch. 320, L. 1975; R.C.M. 1947, 41-2603(part).

39-7-208. En. 41-2606 by Sec. 6, Ch. 320, L. 1975; R.C.M. 1947, 41-2606.

39-7-209. En. Sec. 1, Ch. 286, L. 1979.

Histories of Renumbered Sections:

39-7-203. Renumbered 49-2-310.

39-7-204. Renumbered 49-2-311.

Part 3

Displaced Homemakers

39-7-301. Short title. This part may be cited as the "Displaced Homemaker Act".

History: En. Sec. 1, Ch. 709, L. 1983.

39-7-302. Purpose. It is the intent of the legislature to provide necessary counseling, training, jobs, services, and health care for displaced homemakers so they may achieve independence and the economic security vital to a productive life.

History: En. Sec. 2, Ch. 709, L. 1983.

Cross-References

Comparable worth law, 2-18-208, 2-18-209.

Equal pay for equal work, 39-3-104.

Freedom from sex discrimination in employment, 49-1-102, 49-2-303, 49-3-103, 49-3-201 through 49-3-203.

39-7-303. Definitions. As used in this part, the following definitions apply:

(1) "Commissioner" means the commissioner of labor and industry as provided in 2-15-1701.

(2) "Displaced homemaker" means an individual who:

(a) has worked in the home for at least 3 years providing unpaid household services for family members;

(b) is not gainfully employed or is underemployed;

(c) has had or would have difficulty securing paid employment; and

(d) was dependent on the income of another family member but is no longer supported by such income, was dependent on federal assistance but is no longer eligible for such assistance, or whose eligibility for such federal assistance will be terminated within 6 months.

History: En. Sec. 3, Ch. 709, L. 1983.

Cross-References

Termination of marriage — support and maintenance, Title 40, ch. 4.

39-7-304. Multipurpose service programs for displaced homemakers — administrators. (1) The commissioner may establish multipurpose service programs for displaced homemakers and may enter into contracts with and make grants to nonprofit agencies or organizations, public or private, to establish, organize, and administer the programs described in 39-7-305.

(2) The commissioner shall contract with an administrator for each program.

History: En. Sec. 4, Ch. 709, L. 1983.

39-7-305. Programs to aid displaced homemakers. (1) The programs must be developed in cooperation with federal, state, and local agencies and with private employers in order to coordinate efforts directed toward enabling the displaced homemaker to maintain economic security and emotional well-being and to avoid unnecessary duplication of services.

(2) The services may include but are not limited to:

(a) job counseling services that are:

(i) specifically designed for displaced homemakers by taking into account and building upon their skills and experiences; and

(ii) operated to counsel displaced homemakers with respect to appropriate job opportunities;

(b) job training and job placement services that:

(i) include training and placement programs for jobs in the public and private sectors;

(ii) assist displaced homemakers in gaining admission to existing public or private job training and educational programs; and

(iii) assist in identifying community needs and creating new jobs in the public and private sectors;

(c) referral to or development of programs for displaced homemakers in cooperation with local agencies that provide information and assistance with respect to health care, financial matters, education, nutrition, and legal problems;

(d) support services, such as:

(i) child care for preschool children;

(ii) transportation assistance; and

(iii) grants for education; and

(e) development of outreach programs to serve rural areas where needs for such programs have been identified.

History: En. Sec. 5, Ch. 709, L. 1983.

39-7-306. Rulemaking duties of commissioner. The commissioner, with the advice of other organizations and agencies who provide services to displaced homemakers, shall adopt rules:

(1) concerning the eligibility of persons who may be served by the program;

(2) concerning a graduated fee schedule for program services;

(3) concerning criteria for making grants as provided for in 39-7-304; and

(4) necessary to carry out the provisions of this part.

History: En. Sec. 6, Ch. 709, L. 1983.

Cross-References

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

39-7-307. Acceptance of funds by administrator of local program. The administrator of the local displaced homemaker program may accept, use, and dispose of all grants or contributions of money, services, and property for the purpose of carrying out the provisions of this part. Such grants or contributions may include grants or in-kind contributions from a local governmental unit.

History: En. Sec. 7, Ch. 709, L. 1983.

39-7-308. Evaluation of multipurpose service programs — reports to the commissioner. The administrator of each designated program established under this part shall report annually to the commissioner as prescribed by rule, which report must include:

(1) an evaluation of the effectiveness of the program's job counseling, training, placement referral, support, and outreach services to displaced homemakers; and

(2) an accounting of all expenditures.

History: En. Sec. 8, Ch. 709, L. 1983.

39-7-309. Staff of service programs. To the extent possible, supervisory, technical, and administrative positions in the multipurpose service programs must be filled by displaced homemakers.

History: En. Sec. 9, Ch. 709, L. 1983.

39-7-310. Partial funding from local community. Fifteen percent of the operational costs of a local displaced homemaker program must come from the local community served by the program. The local contribution may include in-kind contributions.

History: En. Sec. 10, Ch. 709, L. 1983.

Parts 4 and 5 reserved

Part 6

Incentive Program — Child Care Assistance

39-7-601. Short title. This part may be cited as the "New Horizons Act".

History: En. Sec. 1, Ch. 579, L. 1987.

39-7-602. Definitions. In this part the following definitions apply:

(1) "AFDC" means the aid to families with dependent children program provided for in Title 53, chapter 4, part 2.

(2) "Department" means the department of labor and industry provided for in 2-15-1701.

History: En. Sec. 3, Ch. 579, L. 1987.

39-7-603. Rulemaking authority. The department shall adopt rules necessary for administering the incentive program provided for in 39-7-604 and the child care assistance provided for in 39-7-605. The rules must establish methods for:

(1) selecting the operators of the displaced homemaker program who may participate in the pilot cash incentive program described in 39-7-604;

(2) selecting the displaced homemaker programs whose clients may receive child care assistance under 39-7-605;

(3) determining eligibility for child care assistance under 39-7-605;

(4) determining the employment status of former AFDC recipients as required by 39-7-606;

(5) coordinating the child care assistance program with other programs intended to assist AFDC recipients to obtain and retain employment; and

(6) evaluating the effect of the incentive program and child care assistance on the employment and continued employment of former AFDC recipients.

History: En. Sec. 7, Ch. 579, L. 1987; amd. Sec. 1, Ch. 251, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

39-7-604. Incentive program. (1) During the biennium ending on June 30, 1989, the department shall pay to selected operators of the displaced homemaker program a $350 cash bonus for each client who received AFDC benefits for at least 9 consecutive months before entering employment and who has completed at least 6 consecutive months of gainful employment.

(2) A program operator whose client qualified him for a cash bonus under subsection (1) shall receive a second $350 cash bonus after the same client has completed 1 year of gainful employment.

History: En. Sec. 4, Ch. 579, L. 1987; amd. Sec. 2, Ch. 251, L. 1989.

39-7-605. Child care assistance — eligibility — costs. (1) For the purpose of assisting AFDC recipients to obtain or retain gainful employment, the department shall provide child care assistance during the biennium ending June 30, 1989, to persons enrolled in selected displaced homemaker programs.

(2) Eligibility for assistance under subsection (1) is limited to persons who have received AFDC for at least 9 months and currently are not eligible for AFDC but would be eligible if they were not gainfully employed.

(3) Assistance under subsection (1) must be provided on an as-needed basis for no longer than the first 6 months of employment and may not exceed $200 a month per child.

(4) Administrative costs paid to subcontractors may not exceed 10% of the money provided for child care assistance and must be used exclusively for follow-up activities conducted for the program evaluation required by 39-7-606.

History: En. Sec. 5, Ch. 579, L. 1987; amd. Sec. 3, Ch. 251, L. 1989.

39-7-606. Program evaluation. (1) The department shall evaluate the extent to which the incentive program and the child care assistance described in 39-7-604 and 39-7-605 increase:

(a) the number of AFDC recipients who obtain gainful employment; and

(b) the number of former AFDC recipients who continue to be gainfully employed for at least 6 months.

(2) Program evaluation must include a determination, every 6 months from the beginning of employment until June 30, 1989, of the employment status of each person who qualifies a program operator for a cash bonus under 39-7-604 or who receives child care assistance under 39-7-605.

History: En. Sec. 6, Ch. 579, L. 1987; amd. Sec. 4, Ch. 251, L. 1989.

CHAPTERS 8 THROUGH 28

RESERVED

CHAPTER 29

VETERANS' PUBLIC EMPLOYMENT PREFERENCE

Part 1 — General Provisions

39-29-101. Definitions.
39-29-102. Point preference in initial hiring for certain applicants.
39-29-103. Notice and claim of preference.
39-29-104. Enforcement of preference.
39-29-105 through 39-29-110 reserved.
39-29-111. Retention during reduction in force.
39-29-112. Adoption of rules.

Chapter Cross-References

Legislative grants of special considerations to veterans, Art. II, sec. 35, Mont. Const.

Reemployment of veteran on completion of service, Title 10, ch. 2, part 2.

Part 1

General Provisions

39-29-101. Definitions. For the purposes of this chapter, the following definitions apply:

(1) "Active duty" means full-time duty with military pay and allowances in the armed forces, except for training, determining physical fitness, or service in the reserve or national guard.

(2) "Armed forces" means the United States:

(a) army, navy, air force, marine corps, and coast guard; and

(b) merchant marine for service recognized by the United States department of defense as active military service for the purpose of laws administered by the department of veterans affairs.

(3) "Disabled veteran" means a person:

(a) whether or not the person is a veteran as defined in this section, who was separated under honorable conditions from active duty in the armed forces and has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension because of a law administered by the department of veterans affairs or a military department; or

(b) who has received a purple heart medal.

(4) "Eligible relative" means:

(a) the unmarried surviving spouse of a veteran or disabled veteran;

(b) the spouse of a disabled veteran who is unable to qualify for appointment to a position;

(c) the mother of a veteran who died under honorable conditions while serving in the armed forces if:

(i) the mother's spouse is totally and permanently disabled; or

(ii) the mother is the widow of the father of the veteran and has not remarried;

(d) the mother of a service-connected permanently and totally disabled veteran if:

(i) the mother's spouse is totally and permanently disabled; or

(ii) the mother is the widow of the father of the veteran and has not remarried.

(5) "Position" means a permanent, temporary, or seasonal position as defined in 2-18-101 for a state position or a similar permanent, temporary, or seasonal position with a public employer other than the state. The term does not include:

(a) a state or local elected office;

(b) appointment by an elected official to a body such as a board, commission, committee, or council;

(c) appointment by an elected official to a public office if the appointment is provided for by law;

(d) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government; or

(e) engagement as an independent contractor or employment by an independent contractor.

(6) "Public employer" means:

(a) a department, office, board, bureau, commission, agency, or other instrumentality of the executive, legislative, or judicial branches of the government of this state;

(b) a unit of the Montana university system or a vocational-technical center;

(c) a school district or community college; and

(d) a county, city, or town.

(7) "Scored procedure" means a written test, structured oral interview, performance test, or other selection procedure or a combination of these procedures that result in a numerical score to which percentage points may be added.

(8) "Under honorable conditions" means a discharge or separation from active duty characterized by the armed forces as under honorable conditions. The term includes honorable discharges and general discharges but does not include dishonorable discharges or other administrative discharges characterized as other than honorable.

(9) "Veteran" means a person who:

(a) was separated under honorable conditions from active duty in the armed forces after having served more than 180 consecutive days, other than for training; or

(b) as a member of a reserve component under an order of active duty pursuant to 10 U.S.C. 672(a), (d), or (g), 10 U.S.C. 673, or 10 U.S.C. 673b served on active duty during a period of war or in a campaign or expedition for which a campaign badge is authorized and was discharged or released from duty under honorable conditions.

History: En. Sec. 1, Ch. 646, L. 1989; amd. Sec. 1, Ch. 78, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 78 in definition of veteran inserted (b) to include a member of a reserve component who served on active duty and was honorably discharged; and made minor changes in style. Amendment effective February 24, 1993.

39-29-102. Point preference in initial hiring for certain applicants. (1) Subject to the restrictions in subsections (2) and (3), whenever a public employer uses a scored procedure, an applicant for an initial hiring, as defined in 39-30-103, must have added to his score the following percentage points of the total possible points that may be granted in the scored procedure:

(a) 5 percentage points if the applicant is a veteran; and

(b) 10 percentage points if the applicant is a disabled veteran or an eligible relative.

(2) A veteran, disabled veteran, or eligible relative may not receive the percentage points provided for in subsection (1) unless the person:

(a) is a United States citizen; and

(b) received 70 or more percentage points of the total possible points that may be granted in the scored procedure.

(3) A disabled veteran who receives 10 percentage points under subsection (1)(b) may not receive an additional 5 percentage points under subsection (1)(a).

History: En. Sec. 2, Ch. 646, L. 1989.

39-29-103. Notice and claim of preference. (1) A public employer shall, by posting or on the application form, give notice of the point preference provided in 39-29-102.

(2) A job applicant who believes he is eligible to receive a point preference shall claim the preference in writing before the time for filing applications for the position involved has passed. Failure to make a timely preference claim for a position is a complete defense to an action instituted by an applicant under 39-29-104 with regard to that position.

(3) If an applicant for a position makes a timely written preference claim, the public employer shall give written notice of its hiring decision to the applicant claiming preference.

History: En. Sec. 3, Ch. 646, L. 1989.

39-29-104. Enforcement of preference. (1) An applicant who believes he is entitled to but has not been given the point preference provided in 39-29-102 may, within 30 days of receipt of the notice of the hiring decision provided for in 39-29-103, submit to the public employer a written request for an explanation of the public employer's hiring decision. Within 15 days of receipt of the request, the public employer shall give the applicant a written explanation.

(2) After following the procedure described in subsection (1), the applicant may, within 90 days after receipt of notice of the hiring decision, file a petition in the district court in the county in which his application was received by the public employer. The petition must state facts that on their face entitle the applicant to a point preference.

(3) (a) Upon filing of the petition, the court shall order the public employer to appear in court at a specified time not less than 5 or more than 10 days after the day the petition was filed and show cause why the applicant was not hired for the position. At the hearing, the public employer has the burden of proving by a preponderance of the evidence that the employer applied the points under 39-29-102 and made a reasonable hiring decision. The applicant has the burden of proving by a preponderance of the evidence that he is a preference eligible applicant.

(b) The time to appear provided in subsection (3)(a) may be waived by stipulation of the parties. If a time to appear has been specified pursuant to subsection (3)(a), the court may, on motion of one of the parties or on stipulation of all of the parties, grant a continuance.

(c) If the public employer does not carry its burden of proof under subsection (3)(a) and the court finds that the applicant is a preference eligible applicant, the court shall order the public employer to comply with the provisions of 39-29-102. In addition, the court shall, upon proper proof, grant an award of backpay, reasonable attorney fees, and costs.

(4) Failure of an applicant to file a petition under subsection (2) within 90 days bars the filing of a petition. If a public employer fails to provide an explanation under subsection (1) within 15 days and a petition is filed under subsection (2), the court shall order the public employer to comply with the provisions of 39-29-102.

(5) The Montana Rules of Civil Procedure apply to a proceeding under this section to the extent that they do not conflict with this section.

History: En. Sec. 4, Ch. 646, L. 1989.

39-29-105 through 39-29-110 reserved.

39-29-111. Retention during reduction in force. (1) Subject to the restriction in subsections (2) and (3), during a reduction in force, a public employer shall retain in a position:

(a) a veteran, disabled veteran, or eligible relative whose performance has not been rated unacceptable under a performance appraisal system over other employees with similar job duties and qualifications and same length of service; and

(b) a disabled veteran with a service-connected disability of 30% or more whose performance has not been rated unacceptable under a performance appraisal system over other veterans, disabled veterans, and eligible relatives with similar job duties and qualifications and same length of service.

(2) An employee is not entitled to preference in retention under subsection (1) unless he is a United States citizen.

(3) The preference in retention under subsection (1) does not apply to a position covered by a collective bargaining agreement.

History: En. Sec. 5, Ch. 646, L. 1989.

39-29-112. Adoption of rules. The department of administration shall adopt rules implementing this chapter. The department's rules apply to all local and state public employers.

History: En. Sec. 6, Ch. 646, L. 1989.

CHAPTER 30

HANDICAPPED PERSONS' PUBLIC EMPLOYMENT PREFERENCE

Part 1 — General Provisions

39-30-101. Short title.
39-30-102. Purposes.
39-30-103. Definitions.
39-30-104 and 39-30-105 reserved.
39-30-106. Adoption of rules.
39-30-107. Certification of handicapped persons.
39-30-108. No application if conflict with federal law.

Part 2 — Operative Provisions

39-30-201. Employment preference in initial hiring.
39-30-202. Eligibility requirements.
39-30-203. Duration of preference.
39-30-204 and 39-30-205 reserved.
39-30-206. Notice and claim of preference.
39-30-207. Enforcement of preference.

Part 1

General Provisions

39-30-101. Short title. This chapter may be cited as the "Montana Handicapped Persons' Employment Preference Act".

History: En. Sec. 1, Ch. 1, Sp. L. 1983; amd. Sec. 8, Ch. 646, L. 1989.

39-30-102. Purposes. The purposes of this chapter are to recognize past employment discrimination against handicapped persons and facilitate the habilitation, rehabilitation, and readjustment of handicapped persons.

History: En. Sec. 2, Ch. 1, Sp. L. 1983; amd. Sec. 9, Ch. 646, L. 1989.

39-30-103. Definitions. For the purposes of this chapter, the following definitions apply:

(1) "Eligible spouse" means the spouse of a handicapped person determined by the department of social and rehabilitation services to have a 100%

disability who is unable to use his employment preference because of his disability.

(2) "Handicapped person" means an individual certified by the department of social and rehabilitation services to have a physical or mental impairment that substantially limits one or more major life activities, such as writing, seeing, hearing, speaking, or mobility, and that limits the individual's ability to obtain, retain, or advance in employment.

(3) (a) "Initial hiring" means a personnel action for which applications are solicited from outside the ranks of the current employees of:

(i) a department, as defined in 2-15-102, for a position within the executive branch;

(ii) a legislative agency, such as the consumer counsel, environmental quality council, office of the legislative auditor, legislative council, or office of the legislative fiscal analyst, for a position within the legislative branch;

(iii) a judicial agency, such as the office of supreme court administrator, office of supreme court clerk, state law library, or similar office in a state district court for a position within the judicial branch;

(iv) a city or town for a municipal position, including a city or municipal court position; and

(v) a county for a county position, including a justice's court position.

(b) A personnel action limited to current employees of a specific public entity identified in subsections (a)(i) through (a)(v) of this subsection (3), current employees in a reduction-in-force pool who have been laid off from a specific public entity identified in subsections (a)(i) through (a)(v) of this subsection (3), or current participants in a federally authorized employment program is not an initial hiring.

(4) (a) "Mental impairment" means:

(i) suffering from a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals; or

(ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term mental impairment does not include alcoholism or drug addiction and does not include any mental impairment, disease, or defect that has been asserted by the individual claiming the preference as a defense to any criminal charge.

(5) "Position" means a permanent or seasonal position as defined in 2-18-101 for a state position or a similar permanent or seasonal position with a public employer other than the state. However, the term does not include:

(a) a temporary position as defined in 2-18-101 for a state position or similar temporary position with a public employer other than the state;

(b) a state or local elected official;

(c) employment as an elected official's immediate secretary, legal advisor, court reporter, or administrative, legislative, or other immediate or first-line aide;

(d) appointment by an elected official to a body such as a board, commission, committee, or council;

(e) appointment by an elected official to a public office if the appointment is provided for by law;

(f) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government; or

(g) engagement as an independent contractor or employment by an independent contractor.

(6) (a) "Public employer" means:

(i) any department, office, board, bureau, commission, agency, or other instrumentality of the executive, judicial, or legislative branch of the government of the state of Montana; and

(ii) any county, city, or town.

(b) The term does not include a school district, a vocational-technical center or program, a community college, the board of regents of higher education, the Montana university system, a special purpose district, an authority, or any political subdivision of the state other than a county, city, or town.

(7) "Substantially equal qualifications" means the qualifications of two or more persons among whom the public employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons.

History: En. Sec. 3, Ch. 1, Sp. L. 1983; amd. Sec. 34, Ch. 658, L. 1987; amd. Sec. 10, Ch. 646, L. 1989.

Cross-References

Judiciary, Title 3.

Legislative Branch, Title 5.

"Developmentally disabled" defined similarly to "mental impairment", 53-20-102.

39-30-104 and 39-30-105 reserved.

39-30-106. Adoption of rules. The department of administration shall adopt rules implementing this chapter and shall consult with the department of social and rehabilitation services in adopting rules governing certification of handicapped persons for purposes of this chapter. The department of administration's rules apply to all public employers, local as well as state.

History: En. Sec. 9, Ch. 1, Sp. L. 1983.

Cross-References

Administrative rulemaking, Title 2, ch. 4, part 3.

39-30-107. Certification of handicapped persons. The department of social and rehabilitation services shall certify persons as handicapped for the purpose of employment preference as provided in this chapter.

History: En. Sec. 6, Ch. 1, Sp. L. 1983.

39-30-108. No application if conflict with federal law. This chapter does not apply to work or positions subject to federal laws or regulations if application of the employment preference conflicts with those laws or regulations.

History: En. Sec. 10, Ch. 1, Sp. L. 1983.

Cross-References

Supremacy clause, Art. VI, U.S. Const. (Federal Materials, MCA Annotations, Vol. 1).

Part 2
Operative Provisions

39-30-201. Employment preference in initial hiring. (1) (a) Except as provided in 10-2-402, in an initial hiring for a position, if a job applicant who is a handicapped person or eligible spouse meets the eligibility requirements contained in 39-30-202 and claims a preference as required by 39-30-206, a public employer shall hire the applicant over any other applicant with substantially equal qualifications who is not a preference eligible applicant.

(b) In an initial hiring, a public employer shall hire a handicapped person over any other preference eligible applicant with substantially equal qualifications.

(2) The employment preference provided for in subsection (1) does not apply to a personnel action described in 39-30-103(3)(b) or to any other personnel action that is not an initial hiring.

History: En. Sec. 4, Ch. 1, Sp. L. 1983; amd. Sec. 11, Ch. 646, L. 1989.

Cross-References

Preference of Montana labor in public works, 18-2-403.

Management rights of public employers, 39-31-303.

Employment preference no violation of antidiscrimination laws, 49-2-405, 49-3-103.

39-30-202. Eligibility requirements. An eligible spouse or handicapped person is not entitled to receive employment preference as provided in 39-30-201 unless:

(1) he is a United States citizen;

(2) he has resided continuously in the state for at least 1 year immediately before applying for employment;

(3) if applying for municipal or county employment, he has resided for at least 30 days immediately before applying for employment in the city, town, or county in which employment is sought; and

(4) he meets those requirements considered necessary by a public employer to successfully perform the essential duties of the position for which he is applying.

History: En. Sec. 5, Ch. 1, Sp. L. 1983; amd. Sec. 12, Ch. 646, L. 1989.

Cross-References

Rules for determining residence, 1-1-215.

39-30-203. Duration of preference. Subject to 39-30-202, a handicapped person or eligible spouse qualifies for employment preference as long as the disabling condition exists.

History: En. Sec. 7, Ch. 1, Sp. L. 1983; amd. Sec. 13, Ch. 646, L. 1989.

39-30-204 and 39-30-205 reserved.

39-30-206. Notice and claim of preference. (1) A public employer shall, by posting or on the application form, give notice of the preferences that this chapter provides in public employment.

(2) A job applicant who believes he has an employment preference shall claim the preference in writing before the time for filing applications for the position involved has passed. Failure to make a timely employment preference

claim for a position is a complete defense to an action in regard to that position under 39-30-207.

(3) If an applicant for a position makes a timely written employment preference claim, the public employer shall give written notice of its hiring decision to each applicant claiming preference.

History: En. Sec. 8(1)-(3), Ch. 1, Sp. L. 1983.

39-30-207. Enforcement of preference. (1) An applicant who believes he has not been accorded his rights under this chapter may, within 30 days of receipt of the notice of the hiring decision provided for in 39-30-206, submit to the public employer a written request for an explanation of the public employer's hiring decision. Within 15 days of receipt of the request, the public employer shall give the applicant a written explanation.

(2) The applicant may, within 90 days after receipt of notice of the hiring decision, file a petition in the district court in the county in which his application was received by the public employer. The petition must state facts that on their face entitle the applicant to an employment preference.

(3) (a) Upon filing of the petition, the court shall order the public employer to appear in court at a specified time not less than 10 or more than 30 days after the day the petition was filed and show cause why the applicant was not hired for the position. At the hearing, the public employer has the burden of proving by a preponderance of the evidence that the employer made a reasonable determination pursuant to 39-30-103(7), and the applicant has the burden of proving by a preponderance of the evidence that he is a preference eligible applicant.

(b) The time to appear provided in subsection (3)(a) may be waived by stipulation of the parties. If a time to appear has been specified pursuant to subsection (3)(a), the court may, on motion of one of the parties or on stipulation of all of the parties, grant a continuance.

(c) If the public employer does not carry its burden of proof under subsection (3)(a) and the court finds that the applicant is a preference eligible applicant, the court shall order the public employer to reopen the selection process for the position involved and shall grant the applicant reasonable attorney fees and court costs. The remedy provided by this section is the only remedy for a violation of this chapter, and a court may not grant any other relief in an action for violation of this chapter.

(4) Failure of an applicant to file a petition under subsection (2) within 90 days bars the filing of a petition. If a public employer fails to provide an explanation under subsection (1) within 15 days and a petition is filed under subsection (2), the court shall order the public employer to reopen the selection process.

(5) The Montana Rules of Civil Procedure apply to a proceeding under this section to the extent that they do not conflict with this section.

History: En. Sec. 8(4), Ch. 1, Sp. L. 1983; amd. Sec. 14, Ch. 646, L. 1989.

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

Evidence, Title 26.

CHAPTER 31

COLLECTIVE BARGAINING FOR PUBLIC EMPLOYEES

Part 1 — General Provisions

39-31-101. Policy.
39-31-102. Chapter not a limit on legislative authority.
39-31-103. Definitions.
39-31-104. Rules.
39-31-105. Administrative procedure act applicable.
39-31-106. Board authorized to subpoena witnesses and administer oaths.
39-31-107. Service of subpoenas, notices of hearing, and other process.
39-31-108. Counsel for public parties to litigation.
39-31-109. Existing collective bargaining agreements not affected.

Part 2 — Public Employee Self-Organization and Certification of Bargaining Representative

39-31-201. Public employees protected in right of self-organization.
39-31-202. Board to determine appropriate bargaining unit — factors to be considered.
39-31-203. Deduction of dues from employee's pay.
39-31-204. Right of nonassociation with labor organization on religious grounds — requirements and procedure for assertion of right.
39-31-205. Designated labor organizations to represent employees without discrimination.
39-31-206. Labor organization to guarantee certain rights and safeguards prior to certification or recognition.
39-31-207. Petition on representation question — investigation by board — hearing.
39-31-208. Representation election at direction of board.
39-31-209. Consent election.
39-31-210. Election in twelve-month period following valid election prohibited.
39-31-211. Labor organizations representing employees of the board to be unaffiliated.

Part 3 — Bargaining

39-31-301. Representative of public employer.
39-31-302. Participation by student representative when public employer is board of regents.
39-31-303. Management rights of public employers.
39-31-304. Negotiable items for school districts.
39-31-305. Duty to bargain collectively — good faith.
39-31-306. Collective bargaining agreements.
39-31-307. Mediation of disputes.
39-31-308. Initiation of factfinding — designation of fact finder.
39-31-309. Factfinding proceedings.
39-31-310. Submission of issues to arbitration.
39-31-311. Training of fact finders and arbitrators.
39-31-312. Nonnegotiable items for state prison.

Part 4 — Unfair Labor Practices

39-31-401. Unfair labor practices of public employer.
39-31-402. Unfair labor practices of labor organization.
39-31-403. Remedies for unfair labor practices.
39-31-404. Six-month limitation on unfair labor practice complaint — exception.
39-31-405. Unfair labor practice complaint — investigation — notice of hearing — service — answer.
39-31-406. Hearing on complaint — findings — order.
39-31-407. Amendment of complaint.
39-31-408. Modification by board of findings and order.
39-31-409. Court enforcement and review of board order.

Part 1

General Provisions

39-31-101. Policy. In order to promote public business by removing certain recognized sources of strife and unrest, it is the policy of the state of Montana to encourage the practice and procedure of collective bargaining to arrive at friendly adjustment of all disputes between public employers and their employees.

History: En. Sec. 1, Ch. 441, L. 1973; R.C.M. 1947, 59-1601.

39-31-102. Chapter not a limit on legislative authority. This chapter does not limit the authority of the legislature, any political subdivision, or the governing body relative to appropriations for salary and wages, hours, fringe benefits, and other conditions of employment.

History: En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; R.C.M. 1947, 59-1605(5).

39-31-103. Definitions. When used in this chapter, the following definitions apply:

(1) "Appropriate unit" means a group of public employees banded together for collective bargaining purposes as designated by the board.

(2) "Board" means the board of personnel appeals provided for in 2-15-1705.

(3) "Confidential employee" means any person found by the board to be a confidential labor relations employee and any person employed in the personnel division, department of administration, who acts with discretionary authority in the creation or revision of state classification specifications.

(4) "Exclusive representative" means the labor organization which has been designated by the board as the exclusive representative of employees in an appropriate unit or has been so recognized by the public employer.

(5) "Labor dispute" includes any controversy concerning terms, tenure, or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(6) "Labor organization" means any organization or association of any kind in which employees participate and which exists for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, fringe benefits, or other conditions of employment.

(7) "Management official" means a representative of management having authority to act for the agency on any matters relating to the implementation of agency policy.

(8) "Person" includes one or more individuals, labor organizations, public employees, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(9) (a) "Public employee" means:

(i) except as provided in subsection (9)(b), a person employed by a public employer in any capacity; and

(ii) an individual whose work has ceased as a consequence of or in connection with any unfair labor practice or concerted employee action.

(b) Public employee does not mean:

(i) an elected official;

(ii) a person directly appointed by the governor;

(iii) a supervisory employee, as defined in subsection (11);

(iv) a management official, as defined in subsection (7);

(v) a confidential employee, as defined in subsection (3);

(vi) a member of any state board or commission who serves the state intermittently;

(vii) a school district clerk;

(viii) a school administrator;

(ix) a registered professional nurse performing service for a health care facility;

(x) a professional engineer; or

(xi) an engineer-in-training.

(10) "Public employer" means the state of Montana or any political subdivision thereof, including but not limited to any town, city, county, district, school board, board of regents, public and quasi-public corporation, housing authority or other authority established by law, and any representative or agent designated by the public employer to act in its interest in dealing with public employees. Public employer also includes any local public agency designated as a head start agency as provided in 42 U.S.C. 9836.

(11) "Supervisory employee" means any individual having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline other employees, having responsibility to direct them, to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

(12) "Unfair labor practice" means any unfair labor practice listed in 39-31-401 or 39-31-402.

History: En. Sec. 2, Ch. 441, L. 1973; amd. Sec. 1, Ch. 117, L. 1975; amd. Sec. 1, Ch. 384, L. 1975; R.C.M. 1947, 59-1602(part); amd. Sec. 1, Ch. 271, L. 1979; amd. Sec. 31, Ch. 397, L. 1979; amd. Sec. 1, Ch. 354, L. 1987.

39-31-104. Rules. The board shall adopt, amend, or rescind such rules it considers necessary and administratively feasible to carry out the provisions of this chapter.

History: En. Sec. 13, Ch. 441, L. 1973; R.C.M. 1947, 59-1613(4).

Cross-References

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

"Board" defined, 39-31-103.

39-31-105. Administrative procedure act applicable. All hearings and appeals shall be in accordance with the appropriate provisions of the Montana Administrative Procedure Act.

History: En. Sec. 17, Ch. 441, L. 1973; R.C.M. 1947, 59-1616.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

39-31-106. Board authorized to subpoena witnesses and administer oaths. (1) To accomplish the objectives and to carry out the duties prescribed by this chapter, the board may subpoena witnesses and may administer oaths and affirmations.

(2) In cases of neglect or refusal to obey a subpoena issued to any person, the district court of the county in which the investigations or the public hearings are taking place or the district court of the first judicial district of this state, upon application by the board, may issue an order requiring such person to appear before the board or agent to produce evidence or give testimony about the matter under investigation. Failure to obey such order may be punished by the court as contempt.

History: En. Sec. 13, Ch. 441, L. 1973; R.C.M. 1947, 59-1613(1), (2).

Cross-References

Contempts, Title 3, ch. 1, part 5.

Subpoena, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

"Board" defined, 39-31-103.

"Person" defined, 39-31-103.

39-31-107. Service of subpoenas, notices of hearing, and other process. Any subpoena, notice of hearing, or other process or notice of the board issued under the provisions of this chapter shall be served as provided by the rules of civil procedure.

History: En. Sec. 13, Ch. 441, L. 1973; R.C.M. 1947, 59-1613(3).

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

"Board" defined, 39-31-103.

39-31-108. Counsel for public parties to litigation. In any action brought under the provisions of this chapter in the courts of this state, the public employer shall be represented by the attorney general or attorney of subdivision and the board shall be represented by counsel hired to represent the board for purposes of that proceeding.

History: En. Sec. 11, Ch. 441, L. 1973; R.C.M. 1947, 59-1611.

Cross-References

"Public employer" defined, 39-31-103.

39-31-109. Existing collective bargaining agreements not affected. Nothing in this chapter shall be construed to remove recognition of established collective bargaining agreements already recognized or in existence prior to July 1, 1973.

History: En. Sec. 16, Ch. 441, L. 1973; R.C.M. 1947, 59-1615.

Part 2

Public Employee Self-Organization and Certification of Bargaining Representative

39-31-201. Public employees protected in right of self-organization. Public employees shall have and shall be protected in the exercise of the right of self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing on questions of wages, hours, fringe benefits, and other conditions of employment, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection free from interference, restraint, or coercion.

History: En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(1).

Cross-References

"Labor organization" defined, 39-31-103.

39-31-202. Board to determine appropriate bargaining unit — factors to be considered. In order to assure employees the fullest freedom in exercising the rights guaranteed by this chapter, the board or an agent of the board shall decide the unit appropriate for the purpose of collective bargaining and shall consider such factors as community of interest, wages, hours, fringe benefits, and other working conditions of the employees involved, the history of collective bargaining, common supervision, common personnel policies, extent of integration of work functions and interchange among employees affected, and the desires of the employees.

History: En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(2).

Cross-References

"Board" defined, 39-31-103.

39-31-203. Deduction of dues from employee's pay. Upon written authorization of any public employee within a bargaining unit, the public employer shall deduct from the pay of the public employee the monthly amount of dues as certified by the secretary of the exclusive representative and shall deliver the dues to the treasurer of the exclusive representative.

History: En. Sec. 12, Ch. 441, L. 1973; R.C.M. 1947, 59-1612.

Cross-References

"Public employee" defined, 39-31-103.

"Public employer" defined, 39-31-103.

39-31-204. Right of nonassociation with labor organization on religious grounds — requirements and procedure for assertion of right. (1) No public employee who is a member of a bona fide religious sect or division thereof, the established and traditional tenets or teachings of which oppose a requirement that a member of such sect or division join or financially support a particular or any labor organization, may be required to join or financially support that particular labor organization or any labor organization if the tenets or teachings oppose a requirement that any labor organization be joined or supported as a condition of employment if such public employee pays in lieu of periodic union dues, initiation fees, and assessments, at the same time or times such periodic union dues, initiation fees, and assessments would otherwise be payable, a sum of money equivalent to such periodic union dues, initiation fees, and assessments to a nonreligious, nonunion charity designated by the labor organization. Such public employee shall furnish to such labor organization written receipts evidencing such payments, and failure to make such payments or furnish such receipts shall subject the employee to the same sanctions as would nonpayment of dues, initiation fees, or assessments under the applicable collective bargaining agreement.

(2) A public employee desiring to avail himself or herself to the right of nonassociation with a labor organization as provided in this section shall make written application to the chairman of the board of personnel appeals.

Within 10 days of the date of receipt of such application, the chairman shall appoint a committee of three, consisting of a clergyman not connected with the sect in question, a labor union official not directly connected with the labor organization in question, and a member of the public at large who shall be the chairman. The committee shall within 10 days of the date of its appointment meet at the locale of either the employee's residence or place of employment and, after receiving written or oral presentations from all interested parties, determine by a majority vote whether or not such public employee qualifies for the right of nonassociation with such labor organization. The committee's decision shall be made in writing within 3 days of the meeting date, and a copy thereof shall be forthwith mailed to such public employee, labor organization, and the chairman of the board of personnel appeals.

History: En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(5); amd. Sec. 1, Ch. 237, L. 1985.

Cross-References

Freedom of religion, Art. II, sec. 5, Mont. Const.

"Board" defined, 39-31-103.

"Labor organization" defined, 39-31-103.

"Public employee" defined, 39-31-103.

39-31-205. Designated labor organizations to represent employees without discrimination. Labor organizations designated in accordance with the provisions of this chapter are responsible for representing the interest of all employees in the exclusive bargaining unit without discrimination for the purposes of collective bargaining with respect to rates of pay, hours, fringe benefits, and other conditions of employment.

History: En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(3).

39-31-206. Labor organization to guarantee certain rights and safeguards prior to certification or recognition. (1) Certification or recognition as an exclusive representative shall be extended or continued, as the case may be, only to a labor or employee organization the written bylaws of which provide for and guarantee the following rights and safeguards and whose practices conform to such rights and safeguards as:

(a) provisions are made for democratic organization and procedures;

(b) elections are conducted pursuant to adequate standards and safeguards;

(c) controls are provided for the regulation of officers and agents having fiduciary responsibility to the organization; and

(d) requirements exist for maintenance of sound accounting and fiscal controls, including annual audits.

(2) The board shall hear and decide all disputes arising under subsection (1).

History: En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(4); amd. Sec. 1, Ch. 18, L. 1985.

39-31-207. Petition on representation question — investigation by board — hearing. (1) The board or an agent of the board shall investigate the petition and, if it has reasonable cause to believe that a question of representation exists, it shall provide for an appropriate hearing upon due notice whenever, in accordance with such rules as may be prescribed by the board, a petition has been filed:

(a) by an employee or group of employees or any labor organization acting in their behalf alleging that 30% of the employees:

(i) wish to be represented for collective bargaining by a labor organization as exclusive representative; or

(ii) assert that the labor organization which has been certified or is currently being recognized by the public employer as bargaining representative is no longer the representative of the majority of employees in the unit; or

(b) by the public employer alleging that one or more labor organizations have presented to it a claim to be recognized as the exclusive representative in an appropriate unit.

(2) In this hearing, the board is not bound by common law and statutory rules of evidence.

History: En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(part).

Cross-References

"Appropriate unit" defined, 39-31-103.

"Board" defined, 39-31-103.

"Labor organization" defined, 39-31-103.

"Public employer" defined, 39-31-103.

39-31-208. Representation election at direction of board. (1) If the board or an agent of the board, in the hearing provided for in 39-31-207, finds that there is a question of representation, it shall direct an election by secret ballot to determine whether and by which labor organization the employees desire to be represented or whether they desire to have no labor organization represent them and shall certify the results thereof.

(2) Only those labor organizations which have been designated by more than 10% of the employees in the unit found to be appropriate shall be placed on the ballot.

(3) The board or an agent of the board shall determine who is eligible to vote in the election and shall establish rules governing the election.

(4) Unless the majority vote is for no representation by a labor organization and in any election where none of the choices for a representative on the ballot receives a majority, a runoff election shall be conducted, the ballot providing for selection between the two choices receiving the largest and the second largest number of valid votes cast in the election.

(5) A labor organization which receives the majority of the votes cast in an election shall be certified by the board as the exclusive representative.

History: En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(part); amd. Sec. 32, Ch. 397, L. 1979.

Cross-References

"Board" defined, 39-31-103.

"Labor organization" defined, 39-31-103.

39-31-209. Consent election. Nothing in 39-31-207 or 39-31-208 prohibits the waiving of hearings by stipulation for the purpose of a consent election in conformity with the rules of the board.

History: En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(part).

Cross-References

"Board" defined, 39-31-103.

39-31-210. Election in twelve-month period following valid election prohibited. An election shall not be directed in any bargaining unit or in any subdivision thereof within which in the preceding 12-month period a valid election has been held.

History: En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(part).

39-31-211. Labor organizations representing employees of the board to be unaffiliated. A labor organization representing employees of the board may not affiliate or associate itself with a labor organization that represents any employees other than employees of the board. The board may not certify a labor organization as the exclusive representative of the employees of the board if, at the time of certification or thereafter, the labor organization is associated or affiliated with a labor organization that represents employees other than employees of the board.

History: En Sec. 2, Ch. 271, L. 1979.

Cross-References

"Board" defined, 39-31-103.

"Labor organization" defined, 39-31-103.

Part 3

Bargaining

39-31-301. Representative of public employer. The chief executive officer of the state, the governing body of a political subdivision, the commissioner of higher education, whether elected or appointed, or the designated authorized representative shall represent the public employer in collective bargaining with an exclusive representative.

History: En. Sec. 9, Ch. 441, L. 1973; amd. Sec. 3, Ch. 313, L. 1974; amd. Sec. 1, Ch. 35, L. 1975; R.C.M. 1947, 59-1609.

Cross-References

"Public employer" defined, 39-31-103.

39-31-302. Participation by student representative when public employer is board of regents. When the board of regents is the public employer defined in 39-31-103, the student government at an institution of higher education may designate an agent or representative to meet and confer with the board of regents and the faculty bargaining agent prior to negotiations with the professional educational employees, to observe those negotiations and participate in caucuses as part of the public employer's bargaining team, and to meet and confer with the board of regents regarding the terms of agreement prior to the execution of a written contract between the regents and the professional educational employees. The student observer is obliged to maintain the confidentiality of these negotiations.

History: En. Sec. 2, Ch. 441, L. 1973; amd. Sec. 1, Ch. 117, L. 1975; amd. Sec. 1, Ch. 384, L. 1975; R.C.M. 1947, 59-1602(part).

Cross-References

"Board" defined, 39-31-103.

"Public employer" defined, 39-31-103.

39-31-303. Management rights of public employers. Public employees and their representatives shall recognize the prerogatives of public employers to operate and manage their affairs in such areas as, but not limited to:

(1) direct employees;

(2) hire, promote, transfer, assign, and retain employees;

(3) relieve employees from duties because of lack of work or funds or under conditions where continuation of such work be inefficient and nonproductive;

(4) maintain the efficiency of government operations;

(5) determine the methods, means, job classifications, and personnel by which government operations are to be conducted;

(6) take whatever actions may be necessary to carry out the missions of the agency in situations of emergency;

(7) establish the methods and processes by which work is performed.

History: En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(2).

Cross-References

Veterans' public employment preference, Title 39, ch. 29.

Handicapped persons' public employment preference, Title 39, ch. 30.

39-31-304. Negotiable items for school districts. Nothing in this chapter shall require or allow boards of trustees of school districts to bargain collectively upon any matter other than matters specified in 39-31-305(2).

History: En. Sec. 2, Ch. 117, L. 1975; R.C.M. 1947, 59-1617.

39-31-305. Duty to bargain collectively — good faith. (1) The public employer and the exclusive representative, through appropriate officials or their representatives, shall have the authority and the duty to bargain collectively. This duty extends to the obligation to bargain collectively in good faith as set forth in subsection (2) of this section.

(2) For the purpose of this chapter, to bargain collectively is the performance of the mutual obligation of the public employer or his designated representatives and the representatives of the exclusive representative to meet at reasonable times and negotiate in good faith with respect to wages, hours, fringe benefits, and other conditions of employment or the negotiation of an agreement or any question arising thereunder and the execution of a written contract incorporating any agreement reached. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

(3) For purposes of state government only, the requirement of negotiating in good faith may be met by the submission of a negotiated settlement to the legislature in the executive budget or by bill or joint resolution. The failure to reach a negotiated settlement for submission is not, by itself, prima facie evidence of a failure to negotiate in good faith.

History: (1)En. Sec. 4, Ch. 441, L. 1973; Sec. 59-1604, R.C.M. 1947; (2), (3)En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; Sec. 59-1605, R.C.M. 1947; R.C.M. 1947, 59-1604, 59-1605(3), (4).

Cross-References

Reduction in force — severance pay and retraining allowance required, 2-18-622.

Contributions, 2-18-703.

"Public employer" defined, 39-31-103.

39-31-306. Collective bargaining agreements. (1) An agreement reached by the public employer and the exclusive representative must be reduced to writing and must be executed by both parties.

(2) Except as provided in subsection (5), an agreement may contain a grievance procedure culminating in final and binding arbitration of unresolved grievances and disputed interpretations of agreements.

(3) An agreement between the public employer and a labor organization must be valid and enforced under its terms when entered into in accordance with the provisions of this chapter and signed by the chief executive officer of the state or political subdivision or commissioner of higher education or by a representative. A publication of the agreement is not required to make it effective.

(4) The procedure for the making of an agreement between the state or political subdivision and a labor organization provided by this chapter is the exclusive method of making a valid agreement for public employees represented by a labor organization.

(5) An agreement to which a school is a party must contain a grievance procedure culminating in final and binding arbitration of unresolved and disputed interpretations of agreements. The aggrieved party may have the grievance or disputed interpretation of the agreement resolved either by final and binding arbitration or by any other available legal method and forum, but not by both. After a grievance has been submitted to arbitration, the grievant and the exclusive representative waive any right to pursue against the school an action or complaint that seeks the same remedy. If a grievant or the exclusive representative files a complaint or other action against the school, arbitration seeking the same remedy may not be filed or pursued under this section.

History: En. Sec. 10, Ch. 441, L. 1973; amd. Sec. 4, Ch. 313, L. 1974; R.C.M. 1947, 59-1610; amd. Sec. 1, Ch. 582, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 582 in (2) inserted exception clause; inserted (5) providing that if a school is a party to it, an agreement must contain a grievance procedure culminating in final and binding arbitration, that grievant may have either final and binding arbitration or any other available legal method and forum, but not both, that after submission to arbitration, grievant and the exclusive representative waive any right to pursue an action or complaint seeking the same remedy, and that if a complaint or other action is filed, arbitration seeking the same remedy is forbidden; and made minor changes in style. Amendment effective April 28, 1993.

Applicability: Section 2, Ch. 582, L. 1993, provided that [this act] applies to agreements entered into on or after [the effective date of this act], except that subsection (5) is applicable to agreements for school years that begin on or after July 1, 1996. Effective April 28, 1993.

Cross-References

"Labor organization" defined, 39-31-103.

"Public employer" defined, 39-31-103.

39-31-307. Mediation of disputes. If, after a reasonable period of negotiation over the terms of an agreement or upon expiration of an existing collective bargaining agreement, a dispute concerning the collective bargaining agreement exists between the public employer and a labor organization, the parties shall request mediation.

History: En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(1).

Cross-References

"Labor organization" defined, 39-31-103.

"Public employer" defined, 39-31-103.

39-31-308. Initiation of factfinding — designation of fact finder. (1) If, upon expiration of an existing collective bargaining agreement or 30 days following certification or recognition of an exclusive representative, a dispute concerning the collective bargaining agreement exists between the employer and the exclusive representative, either party may petition the board to initiate factfinding.

(2) Within 3 days of receipt of such petition, the board shall submit to the parties a list of five qualified, disinterested persons from which the parties shall alternate in striking two names. The remaining person shall be designated fact finder. This process shall be completed within 5 days of receipt of the list. The parties shall notify the board of the designated fact finder.

(3) If no request for factfinding is made by either party before the expiration of the agreement or 30 days following certification or recognition of an exclusive representative, the board may initiate factfinding as provided for in subsection (2) above.

History: En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(2) thru (4).

Cross-References

"Board" defined, 39-31-103.

"Person" defined, 39-31-103.

39-31-309. Factfinding proceedings. (1) The fact finder shall immediately establish dates and place of hearings.

(2) The public employer and the exclusive representative are the only proper parties to factfinding proceedings.

(3) Upon request of either party or the fact finder, the board shall issue subpoenas for hearings conducted by the fact finder. The fact finder may administer oaths.

(4) Upon completion of the hearings, but no later than 20 days from the date of appointment, the fact finder shall make written findings of facts and recommendations for resolution of the dispute and shall serve such findings on the public employer and the exclusive representative. The fact finder may make this report public 5 days after it is submitted to the parties. If the dispute is not resolved 15 days after the report is submitted to the parties, the report must be made public.

(5) The cost of factfinding proceedings must be equally borne by the board and the parties concerned.

(6) Nothing in 39-31-307 through 39-31-310 prohibits the fact finder from endeavoring to mediate the dispute in which he has been selected or appointed as fact finder.

History: En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(5) thru (8); amd. Sec. 33, Ch. 397, L. 1979.

Cross-References

"Board" defined, 39-31-103.

"Public employer" defined, 39-31-103.

39-31-310. Submission of issues to arbitration. Nothing in 39-31-307 through 39-31-310 prohibits the parties from voluntarily agreeing to submit any or all of the issues to final and binding arbitration, and if such agreement is reached, the arbitration shall supersede the factfinding procedures set forth in those sections. An agreement to arbitrate and the award issued in accordance with such agreement shall be enforceable in the same manner as is provided in this chapter for enforcement of collective bargaining agreements.

History: En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(9).

Cross-References

Uniform Arbitration Act, Title 27, ch. 5.

39-31-311. Training of fact finders and arbitrators. The board of personnel appeals shall establish a course of education for the training of fact finders and arbitrators. No person may serve as a fact finder or as an arbitrator under this chapter until he has successfully completed the course or equivalent education.

History: En. 59-1614.1 by Sec. 1, Ch. 57, L. 1977; R.C.M. 1947, 59-1614.1.

Cross-References

"Board" defined, 39-31-103.

"Person" defined, 39-31-103.

39-31-312. Nonnegotiable items for state prison. Collective bargaining agreements entered after July 14, 1982, may not contain provisions prohibiting or restricting the use of inmate labor as provided for in 53-30-151.

History: En. Sec. 3, Ch. 7, Sp. L. 1982.

Part 4

Unfair Labor Practices

39-31-401. Unfair labor practices of public employer. It is an unfair labor practice for a public employer to:

(1) interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in 39-31-201;

(2) dominate, interfere, or assist in the formation or administration of any labor organization; however, subject to rules adopted by the board under 39-31-104, an employer is not prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(3) discriminate in regard to hire or tenure of employment or any term or condition of employment in order to encourage or discourage membership in any labor organization; however, nothing in this chapter or in any other statute of this state precludes a public employer from making an agreement with an exclusive representative to require, as a condition of employment, that an employee who is not or does not become a union member, must have an amount equal to the union initiation fee and monthly dues deducted from his wages in the same manner as checkoff of union dues;

(4) discharge or otherwise discriminate against an employee because he has signed or filed an affidavit, petition, or complaint or given any information or testimony under this chapter; or

(5) refuse to bargain collectively in good faith with an exclusive representative.

History: En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; R.C.M. 1947, 59-1605(1); amd. Sec. 34, Ch. 397, L. 1979.

Cross-References

"Board" defined, 39-31-103.

"Labor organization" defined, 39-31-103.

"Public employer" defined, 39-31-103.

"Unfair labor practice" defined, 39-31-103.

39-31-402. Unfair labor practices of labor organization. It is an unfair labor practice for a labor organization or its agents to:

(1) restrain or coerce employees in the exercise of the right guaranteed in 39-31-201 or a public employer in the selection of his representative for the purpose of collective bargaining or the adjustment of grievances;

(2) refuse to bargain collectively in good faith with a public employer if it has been designated as the exclusive representative of employees;

(3) use agency shop fees for contributions to political candidates or parties at state or local levels.

History: **En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; R.C.M. 1947, 59-1605(2).**

Cross-References

"Public employer" defined, 39-31-103.

"Labor organization" defined, 39-31-103.

"Unfair labor practice" defined, 39-31-103.

39-31-403. Remedies for unfair labor practices. Violations of the provisions of 39-31-401 or 39-31-402 are unfair labor practices remediable by the board pursuant to this part.

History: **En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part); amd. Sec. 35, Ch. 397, L. 1979.**

Cross-References

"Board" defined, 39-31-103.

39-31-404. Six-month limitation on unfair labor practice complaint — exception. No notice of hearing shall be issued based upon any unfair labor practice more than 6 months before the filing of the charge with the board unless the person aggrieved thereby was prevented from filing the charge by reason of service in the armed forces, in which event the 6-month period shall be computed from the day of his discharge.

History: **En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part).**

Cross-References

"Unfair labor practice" defined, 39-31-103.

39-31-405. Unfair labor practice complaint — investigation — notice of hearing — service — answer. (1) Whenever a complaint is filed alleging that any person has engaged in or is engaging in any such unfair labor practice, the board shall issue and cause to be served upon the person a copy of the complaint and provide the person with an opportunity to respond to all charges. After receipt of responses from the charged party, an agent designated by the board for such purposes shall investigate the alleged unfair labor practice.

(2) If, after the investigation, the agent designated by the board determines that the charge is without probable merit, the board shall issue and cause to be served upon the complaining party and the person being charged notice of its intention to dismiss the complaint. The dismissal becomes a final order of the board unless either party requests a review of the decision to dismiss the complaint. The request for a review must be made in writing within 10 days of receipt of the notice of intention to dismiss. If a review is requested, the board may uphold its decision to dismiss the complaint or, pursuant to subsection (3), schedule a hearing on the merits. If the board upholds its decision to dismiss the complaint, the dismissal becomes a final order of the board.

(3) If after the investigation or after the review provided for in subsection (2), the board determines that there is probable merit for the charge, the board shall issue and cause to be served upon the complaining party and the party charged a notice of hearing before the board, a member thereof, or before a

designated agent at a time and place therein fixed, not less than 5 working days after the date of service.

(4) If a hearing is to be held, the person against whom the charge is filed shall file an answer to the complaint.

(5) Each party to an unfair labor practice proceeding has the right to disqualify, without cause, the hearing examiner designated by the board to hear the complaint. The right may be exercised only once by each party and must be exercised within 5 days from the time a party is notified by the board of the hearing examiner designated to hear the matter. The exercise of this right is in addition to any rights a party has to disqualify a hearing examiner under 2-4-611.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part); amd. Sec. 1, Ch. 95, L. 1983; (5)En. Sec. 1, Ch. 211, L. 1983.

Cross-References

Administrative contested case procedure, Title 2, ch. 4, part 6.

"Board" defined, 39-31-103.

"Person" defined, 39-31-103.

"Unfair labor practice" defined, 39-31-103.

39-31-406. Hearing on complaint — findings — order. (1) The complainant and the person charged shall be parties and shall appear in person or otherwise give testimony at the place and time fixed in the notice of hearing. In the discretion of the board or its agent conducting the hearing, any other person may be allowed to intervene in the proceeding and present testimony.

(2) In any hearing the board is not bound by the rules of evidence prevailing in the courts.

(3) The testimony taken by the board or its agent shall be reduced to writing and filed with the board. Thereafter, in its discretion the board upon notice may take further testimony or hear argument.

(4) If, upon the preponderance of the testimony taken, the board is of the opinion that any person named in the complaint has engaged in or is engaging in an unfair labor practice, it shall state its findings of fact and shall issue and cause to be served on the person an order requiring him to cease and desist from the unfair labor practice and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this chapter. The order may further require the person to make reports from time to time showing the extent to which he has complied with the order. No order of the board shall require the reinstatement of any individual as an employee who has been suspended or discharged or the payment to him of any back pay if it is found that the individual was suspended or discharged for cause.

(5) If, upon the preponderance of the testimony taken, the board is not of the opinion that the person named in the complaint has engaged in or is engaging in the unfair labor practice, then the board shall state its findings of fact and shall issue an order dismissing the complaint.

(6) If the evidence is presented before a member of the board or before an examiner, the member or the examiner, as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed decision, together with a recommended order, which shall be filed with the board, and if no exceptions are filed within 20 days after service thereof upon the parties or within such further period as the board may authorize, the recommended

order shall become the order of the board. The board shall issue a final order within 5 months after final briefs are submitted to the hearing officer. If briefs are to be submitted, but either or both of the parties fail to submit their brief on the date set by the hearing examiner at the close of the hearing on the matter, then the board shall issue a final order within 5 months after the date the last brief was ordered to be submitted. If no briefs are to be submitted, the board shall issue a final order within 5 months after the hearing.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part); amd. Sec. 1, Ch. 369, L. 1979; amd. Sec. 1, Ch. 213, L. 1983.

Cross-References

Administrative contested case procedure, Title 2, ch. 4, part 6.

"Board" defined, 39-31-103.

"Person" defined, 39-31-103.

"Unfair labor practice" defined, 39-31-103.

39-31-407. Amendment of complaint. Any complaint may be amended by the complainant at any time prior to the issuance of an order based thereon, provided that the charged party is not unfairly prejudiced thereby.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part).

39-31-408. Modification by board of findings and order. Until the record in a proceeding has been filed in district court, the board at any time, upon reasonable notice and in such manner as it considers proper, may modify or set aside, in whole or in part, any finding or order made or issued by it.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(3).

Cross-References

"Board" defined, 39-31-103.

39-31-409. Court enforcement and review of board order. (1) The board or the complaining party may petition for the enforcement of the order of the board and for appropriate temporary relief or a restraining order and shall file in the district court at its own expense the record in the proceedings.

(2) Upon the filing of the petition, the district court shall have jurisdiction of the proceeding. Thereafter, the district court shall set the matter for hearing and shall order the party charged to be served with notice of hearing at least 20 days before the date set for hearing.

(3) No objection that has not been raised before the board shall be considered by the court unless the failure or neglect to raise the objection is excused because of extraordinary circumstances.

(4) The findings of the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

(5) If either party applies to the court for leave to present additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to present it in the hearing before the board, the court may order the additional evidence to be taken before the board and to be made part of the record. The board may modify its findings as to the facts or make new findings by reason of additional evidence so taken and filed, and it shall file the modifying or new findings with the district court.

(6) After the hearing, the district court shall issue its order granting such temporary or permanent relief or restraining order as it considers just and proper, enforcing as so modified or setting aside, in whole or in part, the order

of the board. Any order of the district court shall be subject to review by the supreme court in accordance with rules of civil procedure.

(7) The commencement of proceedings under subsections (1) through (6) of this section shall not, unless specifically ordered by the court, operate as a stay of the board's order.

History: **En. Sec. 8, Ch. 441, L. 1973; R.C.M. 1947, 59-1608.**

Cross-References

Judicial review of contested cases, Title 2, ch. 4, part 7.

"Board" defined, 39-31-103.

CHAPTER 32

COLLECTIVE BARGAINING FOR NURSES

Part 1 — General Provisions

39-32-101. Purpose of chapter.
39-32-102. Definitions.
39-32-103. Rules.
39-32-104. Hearings for determination of appropriate unit.
39-32-105. General classifications for health care facilities and appropriate units — petition for removal from general classification.
39-32-106. Determination of appropriate bargaining unit.
39-32-107. Repealed.
39-32-108. Repealed.
39-32-109. Unfair labor practices.
39-32-110. Unlawful strikes.
39-32-111. Repealed.
39-32-112. Adjudication of unfair labor practices complaints by board.
39-32-113. Representation questions decided by board.
39-32-114. Subpoena power of board.

Chapter Cross-References

Regulation and licensure of nurses, Title 37, ch. 8.

Regulation and licensure of hospitals, Title 50, ch. 5.

Part 1

General Provisions

39-32-101. Purpose of chapter. The purpose of this chapter is to encourage effective measures to assure uninterrupted continuation of sufficient competent nursing care of the ill and infirm in the state and further to encourage the practice of mutually and peacefully agreeing upon the establishment and maintenance of desirable employment practices between nurse employees, professional and practical, and their health care facility employers, either public or private.

History: **En. Sec. 1, Ch. 320, L. 1969; R.C.M. 1947, 41-2201.**

39-32-102. Definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Appropriate unit" means a homogenous group of employees (as herein defined) of a health care facility having similar duties and qualifications determined pursuant to 39-32-106.

(2) "Board" means the board of personnel appeals provided for in 2-15-1705.

(3) "Employee" means a registered professional or licensed practical nurse performing services for compensation for a health care facility but does not include a member of a religious order assigned to a health care facility by the order as a part of her obligation to the order.

(4) "Health care facility" means a hospital or nursing home or other agency or establishment employing employees as defined in this chapter, whether operated publicly or privately, having as one of its principal purposes the preservation of health or the care of sick or infirm individuals, or both.

(5) "Strike" shall mean any work stoppage caused by the employees of a health care facility, as defined in subsection (4) of this section, that interferes with the operation of the health care facility or affects the care of patients in the health care facility.

History: En. Sec. 2, Ch. 320, L. 1969; R.C.M. 1947, 41-2202(1) thru (3), (5); amd. Sec. 1, Ch. 485, L. 1983.

39-32-103. Rules. The board shall adopt and promulgate rules to carry into effect the provisions of this chapter.

History: En. Sec. 7, Ch. 320, L. 1969; R.C.M. 1947, 41-2207(3); amd. Sec. 2, Ch. 485, L. 1983.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

39-32-104. Hearings for determination of appropriate unit. The board may set the time and place for hearings for determination of the composition of appropriate units when requested to make such determination under 39-32-106(2).

History: En. Sec. 7, Ch. 320, L. 1969; R.C.M. 1947, 41-2207(1); amd. Sec. 3, Ch. 485, L. 1983.

Cross-References

"Appropriate unit" defined, 39-32-102.

39-32-105. General classifications for health care facilities and appropriate units — petition for removal from general classification. (1) The board may determine, on its own motion by holding hearings or conducting such investigations as it thinks necessary, general classifications for health care facilities and appropriate units.

(2) When such determination has been made hereunder and when an application has been made by a health care facility or an employee organization for a specific determination as to it, the board may make such determination on the basis of such general classification.

(3) The health care facility or employee organization may, within 30 days after notice to it of such determination, file a request for a hearing upon written petition which shall set forth the facts which it believes remove it from such general classification, and hearing shall be held on such petition.

History: En. Sec. 7, Ch. 320, L. 1969; R.C.M. 1947, 41-2207(2); amd. Sec. 4, Ch. 485, L. 1983.

Cross-References

"Employee" defined, 39-32-102.

"Health care facility" defined, 39-32-102.

39-32-106. Determination of appropriate bargaining unit. (1) The composition of an appropriate unit in a health care facility, for purposes of this law, may be determined by mutual consent between such facility and the employees thereof.

(2) In the event no such mutual consent is available, then either the facility or representatives of employees may apply to the board and said board, through a duly designated agent, shall make a determination of the composition of such an appropriate unit.

(3) In determining such appropriate unit, professional employees may not be included in the same unit with nonprofessional employees unless a majority of professional employees in a proposed unit desire such inclusion. Weight shall be accorded similarity of duties, licensure, and conditions of employment, among other relevant factors, in determining an appropriate unit.

History: En. Sec. 4, Ch. 320, L. 1969; R.C.M. 1947, 41-2204; amd. Sec. 5, Ch. 485, L. 1983.

Cross-References

"Appropriate unit" defined, 39-32-102.

"Health care facility" defined, 39-32-102.

39-32-107. Repealed. Sec. 12, Ch. 485, L. 1983.

History: En. Sec. 5, Ch. 320, L. 1969; R.C.M. 1947, 41-2205.

39-32-108. Repealed. Sec. 12, Ch. 485, L. 1983.

History: En. Sec. 6, Ch. 320, L. 1969; R.C.M. 1947, 41-2206.

39-32-109. Unfair labor practices. (1) It is an unfair labor practice for a health care facility to do one or more of the following:

(a) interfere with or restrain or coerce employees in any manner in the exercise of their right of self-organization;

(b) initiate, create, dominate, contribute to, or interfere with the formation or administration of any employee organization that has collective bargaining as one of its principal functions;

(c) discriminate in regard to hire terms or conditions of employment when a purpose of such is to discourage membership in an employee organization that has collective bargaining as one of its principal functions;

(d) refuse to meet and bargain in good faith with the duly designated representatives of an appropriate bargaining unit of its employees. For the purpose of this subsection, it is a requirement of bargaining in good faith that the parties be willing to reduce in writing and have their representative sign any agreement arrived at through negotiations and discussion.

(e) unilaterally exclude from work or prevent from working or discharge any one or more employees when the purpose of such action is in whole or in part to interfere with or coerce or intimidate an employee in the exercise of rights assured in this law.

(2) It is an unfair labor practice for a labor organization or its agents to:

(a) restrain or coerce employees in the exercise of the right to:

(i) form, join, or assist any labor organization;

(ii) bargain collectively through representatives of their own choosing; or

(iii) engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection;

(b) restrain or coerce an employer in the selection of his representative for the purpose of collective bargaining or the adjustment of grievances;

(c) refuse to bargain collectively in good faith with an employer if it has been designated as the exclusive representative of employees;

(d) use agency shop fees for contributions to political candidates or parties.

History: En. Sec. 3, Ch. 320, L. 1969; R.C.M. 1947, 41-2203; amd. Sec. 6, Ch. 485, L. 1983; (2)En. Sec. 7, Ch. 485, L. 1983.

Cross-References

"Employee" defined, 39-32-102.

"Health care facility" defined, 39-32-102.

39-32-110. Unlawful strikes. It shall be unlawful for any employee of a health care facility, as defined in 39-32-102, to participate in a strike if there is another strike in effect at another health care facility within a radius of 150 miles. Employees of a health care facility, as defined in 39-32-102, or their duly elected representative must give the health care facility 30 days' written notice of any strike by them and must specify in the notice the day the strike is to begin.

History: En. Sec. 9, Ch. 320, L. 1969; R.C.M. 1947, 41-2209.

Cross-References

"Employee" defined, 39-32-102.

"Health care facility" defined, 39-32-102.

"Strike" defined, 39-32-102.

39-32-111. Repealed. Sec. 12, Ch. 485, L. 1983.

History: En. Sec. 8, Ch. 320, L. 1969; R.C.M. 1947, 41-2208.

39-32-112. Adjudication of unfair labor practices complaints by board. Violations of 39-32-109 are remediable by the board, and board orders are enforceable and reviewable by the court in the same manner as provided for in Title 39, chapter 31, part 4.

History: En. Sec. 8, Ch. 485, L. 1983.

39-32-113. Representation questions decided by board. Representation questions shall be decided by the board in the same manner as provided for in 39-31-207 through 39-31-210.

History: En. Sec. 9, Ch. 485, L. 1983.

39-32-114. Subpoena power of board. The board has the same power to subpoena witnesses and administer oaths and affirmations under this chapter as it does under Title 39, chapter 31, and the provisions of 39-31-106 and 39-31-107 are incorporated by reference into this chapter.

History: En. Sec. 10, Ch. 485, L. 1983.

Cross-References

Procedural rules on subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

CHAPTER 33

GENERAL LIMITATIONS ON COLLECTIVE BARGAINING RIGHTS

Part 1 — Right to Work Without Union Interference in Certain Small Businesses

39-33-101. Intent of part.
39-33-102. Immediate family defined.
39-33-103. Unfair labor practice.
39-33-104. Beer and liquor establishment excepted.
39-33-105. Violation.

Part 2 — Employment of Strikebreakers

39-33-201. Recruitment of strikebreakers by third parties.
39-33-202. Professional strikebreakers prohibited.
39-33-203. Agreements to procure strikebreakers prohibited.
39-33-204. Advertising for strikebreakers restricted.
39-33-205. Penalties.

Part 1

Right to Work Without Union Interference in Certain Small Businesses

39-33-101. Intent of part. It is the intent of this part that a sole proprietor or a member of a partnership consisting of not more than two partners who own a retail or amusement establishment and the members of his immediate family shall have the right to do any work in his place of business without interference by any union or any member thereof.

History: En. Sec. 1, Ch. 160, L. 1959; R.C.M. 1947, 41-1801.

39-33-102. Immediate family defined. "Immediate family" shall include the owner, his spouse, and any children under the age of 18 years.

History: En. Sec. 3, Ch. 160, L. 1959; R.C.M. 1947, 41-1803.

39-33-103. Unfair labor practice. Any union or member thereof who shall infringe or interfere with the right of an owner and the members of his immediate family to do any work in his place of business shall be guilty of an unfair labor practice.

History: En. Sec. 2, Ch. 160, L. 1959; R.C.M. 1947, 41-1802.

39-33-104. Beer and liquor establishment excepted. Nothing in this part shall apply to an establishment that sells liquor or beer.

History: En. Sec. 4, Ch. 160, L. 1959; R.C.M. 1947, 41-1804.

Cross-References

Liquor licenses, Title 16, ch. 4.

39-33-105. Violation. Violation of any of the provisions of this part shall be punishable by a fine of $50.

History: En. Sec. 5, Ch. 160, L. 1959; R.C.M. 1947, 41-1805.

Part 2
Employment of Strikebreakers

39-33-201. Recruitment of strikebreakers by third parties. No person, partnership, firm, or officer or agent thereof may recruit, procure, supply, or refer a professional strikebreaker for employment in place of an employee involved in a labor dispute when such person, partnership, or firm is not a party to the dispute.

History: En. 41-2501 by Sec. 1, Ch. 40, L. 1975; R.C.M. 1947, 41-2501.

39-33-202. Professional strikebreakers prohibited. (1) An employer involved in a labor dispute may not employ in the place of an employee involved in such dispute a professional strikebreaker who customarily and repeatedly offers himself for employment in the place of employees involved in labor disputes.

(2) A professional strikebreaker who customarily and repeatedly offers himself for employment in place of employees involved in labor disputes may not take or offer to take the place in employment of an employee involved in a labor dispute within the state.

History: En. 41-2502 by Sec. 2, Ch. 40, L. 1975; R.C.M. 1947, 41-2502.

39-33-203. Agreements to procure strikebreakers prohibited. No employer involved in a labor dispute may contract or arrange with any other person, partnership, or firm for the latter to recruit, procure, supply, or refer professional strikebreakers for employment in place of employees involved in the dispute.

History: En. 41-2503 by Sec. 3, Ch. 40, L. 1975; R.C.M. 1947, 41-2503.

39-33-204. Advertising for strikebreakers restricted. No person, partnership, or firm may recruit, solicit, or advertise for employees or refer persons to employment in place of employees involved in a labor dispute without adequate notice in such advertisement or reference that there is a labor dispute at the place at which employment is offered and that the employment offered is in the place of employees involved in such dispute.

History: En. 41-2504 by Sec. 4, Ch. 40, L. 1975; R.C.M. 1947, 41-2504.

39-33-205. Penalties. A person convicted of violating 39-33-201, 39-33-202, or 39-33-203 shall be punished by a fine of not less than $1,000 or more than $5,000 or by imprisonment for not less than 1 or more than 2 years. A person convicted of violating 39-33-204 shall be punished by a fine of not less than $100 or more than $500 or imprisonment for not more than 30 days.

History: En. 41-2505 by Sec. 5, Ch. 40, L. 1975; R.C.M. 1947, 41-2505.

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

CHAPTER 34

ARBITRATION FOR FIREFIGHTERS

Part 1 — General Provisions

39-34-101. Arbitration between firefighters and public employers.
39-34-102. Designation of arbitrator.
39-34-103. Powers and duties of arbitrator for firefighters and public employers.
39-34-104. Collective bargaining permitted during arbitration.
39-34-105. Strikes limited.
39-34-106. Cost of arbitration.

Chapter Cross-References

Firefighters and fire protection, Title 7, ch. 33.

Uniform Arbitration Act, Title 27, ch. 5.

Part 1

General Provisions

39-34-101. Arbitration between firefighters and public employers. (1) This section applies only to firefighters and their public employers.

(2) If an impasse is reached in the course of collective bargaining between a public employer and a firefighters' organization or its exclusive representative and if the procedures for mediation and factfinding in 39-31-307 through 39-31-310 have been exhausted, either party or both jointly may petition the board of personnel appeals for final and binding arbitration.

History: En. Sec. 1, Ch. 472, L. 1979; amd. Sec. 165, Ch. 575, L. 1981.

39-34-102. Designation of arbitrator. Within 3 days of the receipt of a petition for final and binding arbitration, the board of personnel appeals shall submit to the parties a list of five qualified and disinterested arbitrators. From the list submitted by the board, the parties shall alternately strike two names. The remaining person shall be designated as the arbitrator. The parties shall notify the board of the designated arbitrator within 5 days of the receipt of the list.

History: En. Sec. 2, Ch. 472, L. 1979; amd. Sec. 166, Ch. 575, L. 1981.

39-34-103. Powers and duties of arbitrator for firefighters and public employers. (1) The arbitrator shall establish dates and a place for hearings and may subpoena witnesses and require the submission of evidence necessary to resolve the impasse.

(2) Prior to making a determination on any issue relating to the impasse, the arbitrator may refer the issues back to the parties for further negotiation.

(3) At the conclusion of the hearings, the arbitrator shall require the parties to submit their respective final position on matters in dispute.

(4) The arbitrator shall make a just and reasonable determination of which final position on matters in dispute will be adopted within 30 days of the commencement of the arbitration proceedings. The arbitrator shall notify the board of personnel appeals and the parties, in writing, of his determination.

(5) In arriving at a determination, the arbitrator shall consider any relevant circumstances, including:

(a) comparison of hours, wages, and conditions of employment of the employees involved with employees performing similar services and with other services generally;

(b) the interests and welfare of the public and the financial ability of the public employer to pay;

(c) appropriate cost-of-living indices;

(d) any other factors traditionally considered in the determination of hours, wages, and conditions of employment.

(6) The determination of the arbitrator is final and binding and is not subject to the approval of any governing body.

History: En. Sec. 3, Ch. 472, L. 1979; amd. Sec. 167, Ch. 575, L. 1981.

39-34-104. Collective bargaining permitted during arbitration. Nothing prohibits the parties to the impasse from reaching an agreement prior to the rendering of a determination by the arbitrator.

History: En. Sec. 4, Ch. 472, L. 1979.

39-34-105. Strikes limited. Strikes are prohibited during the term of any contract and the negotiations or arbitration of that contract.

History: En. Sec. 5, Ch. 472, L. 1979.

39-34-106. Cost of arbitration. The cost of arbitration shall be shared equally by the public employer and the firefighters' organization or its exclusive representative.

History: En. Sec. 6, Ch. 472, L. 1979.

CHAPTERS 35 THROUGH 50

RESERVED

CHAPTER 51

UNEMPLOYMENT INSURANCE

Part 1 — General Provisions

39-51-101. Short title.
39-51-102. Declaration of state public policy.
39-51-103. Nonliability of state — right to benefits subject to provisions of chapter and extent of available funds.
39-51-104. Chapter to become inoperative if federal act becomes inoperative.
39-51-105. Disbursement of funds if federal act becomes inoperative.
39-51-106. Approval by secretary of labor required for chapter to have effect.

Part 2 — Definitions

39-51-201. General definitions.
39-51-202. Employer defined.
39-51-203. Employment defined.
39-51-204. Exclusions from definition of employment.
39-51-205. Agricultural labor defined.

39-51-206. Agricultural labor — who treated as employer of member of a crew furnished by a crew leader.

Part 3 — General Administrative Provisions

39-51-301. Administration — duties and powers of department.
39-51-302. Administrative rules.
39-51-303. Publication and distribution of materials.
39-51-304. Personnel.
39-51-305. Department to appoint appeals referees.
39-51-306. Repealed.
39-51-307. Department to create employment service.
39-51-308. Acquisition and disposition of property by department.
39-51-309. Representation of department and state in court.
39-51-310. Function of board.

Part 4 — Financial Administration

39-51-401. Unemployment insurance fund — establishment and control.
39-51-402. Unemployment insurance fund — custodian — accounts and deposits.
39-51-403. Money to be requisitioned from unemployment trust fund solely for payment of benefits — exception.
39-51-404. Administrative expenses.
39-51-405. Signatures required on warrants.
39-51-406. Unemployment insurance administration account.
39-51-407. Reimbursement of fund by state.
39-51-408. Advances from federal unemployment trust fund.
39-51-409. Employment security account.

Part 5 — Governmental Cooperation

39-51-501. State-federal cooperation.
39-51-502. Cooperation with other agencies.
39-51-503. Agreements with railroad retirement board.
39-51-504. Reciprocal benefit arrangements.

Part 6 — Records and Reports

39-51-601. Department to maintain wage record.
39-51-602. Method to be used by department in keeping wage records.
39-51-603. Employing unit to keep records and make reports.
39-51-604. Exemption.

Parts 7 through 10 reserved

Part 11 — Employer Contributions

39-51-1101. Commencement and termination of coverage under chapter.
39-51-1102. Election by employing units not otherwise subject to chapter.
39-51-1103. Contributions by employers required — payments in lieu thereof authorized for certain employers.
39-51-1104. Duty and liability of contractor and subcontractor, respectively, in regard to taxes, penalties, and interest owed by subcontractor.
39-51-1105. Liability of corporate officers for taxes, penalties, and interest owed by corporation.
39-51-1106. Repealed.
39-51-1107. Repealed.
39-51-1108. Amount of wages per employee subject to contribution.
39-51-1109. Tax appeals.
39-51-1110. Refunds to employers.
39-51-1111 through 39-51-1120 reserved.
39-51-1121. Definitions.
39-51-1122. Treatment of minor irregularities in determination of eligible employer status.
39-51-1123. Rates of contributions.
39-51-1124. Procedure for election to make payments in lieu of contributions.
39-51-1125. Computation of payments in lieu of contributions.

39-51-1126. Termination of election to make payments in lieu of contributions.
39-51-1127 through 39-51-1130 reserved.
39-51-1131. Terminated.

Part 12 — Employer Classification and Experience Rating

39-51-1201 through 39-51-1205. Repealed.
39-51-1206. Department to provide for notification of employers of their classification and contribution rate.
39-51-1207 through 39-51-1210 reserved.
39-51-1211. Definitions.
39-51-1212. Experience rating for governmental entities.
39-51-1213. Classification of employers for experience rating purposes.
39-51-1214. Benefit payments chargeable to employer experience rating accounts.
39-51-1215. Maintenance of experience rating records.
39-51-1216. Experience rating record voided when account inactive.
39-51-1217. Schedule of rates assigned based on trust fund reserve.
39-51-1218. Rate schedules.
39-51-1219. Procedures for the substitution, merger, or acquisition of an employer account by a successor employing unit.

Part 13 — Unpaid Contributions

39-51-1301. Penalty and interest on past-due taxes.
39-51-1302. Summary or jeopardy assessment of unpaid taxes.
39-51-1303. Collection of unpaid taxes by civil action.
39-51-1304. Lien for payment of unpaid taxes — levy and execution.
39-51-1305. Priority of payment of taxes due under legal dissolutions or distributions.
39-51-1306. Reciprocity with other states for collection of unpaid taxes.

Parts 14 through 20 reserved

Part 21 — Benefit Eligibility

39-51-2101. Total unemployment — when.
39-51-2102. Week of unemployment — when deemed to commence.
39-51-2103. Payment of benefits.
39-51-2104. General benefit eligibility conditions.
39-51-2105. Qualifying wages.
39-51-2106. Certain wages not to be used in determining benefit eligibility or amount.
39-51-2107. Services for remuneration to be performed during benefit year as condition for receiving benefits in second benefit year — amount required.
39-51-2108. Payment of benefits based on service in public, charitable, or educational organizations.
39-51-2109. Payment of benefits to athletes.
39-51-2110. Payment of benefits to aliens.

Part 22 — Amount and Duration of Benefits

39-51-2201. Weekly benefit amount — determination of average weekly wage.
39-51-2202. Partial payment of benefits.
39-51-2203. Reduction of benefits because of amounts received from certain other sources.
39-51-2204. Maximum benefit amount.
39-51-2205. Continuation of benefits at death of claimant.
39-51-2206. Repealed.

Part 23 — Benefit Disqualification

39-51-2301. Disqualification not to be confined to a single benefit year.
39-51-2302. Disqualification for leaving work without good cause.
39-51-2303. Disqualification for discharge due to misconduct.
39-51-2304. Disqualification for failure to apply for or to accept suitable work.
39-51-2305. Disqualification when unemployment due to strike.
39-51-2306. Disqualification because of receipt of certain other wages, compensation, or benefits.
39-51-2307. Disqualification because of student status.

39-51-2308. Repealed.

Part 24 — Claims for Benefits

39-51-2401. Claims to be made in accordance with regulations — employers to post and make available copies of such regulations.
39-51-2402. Initial determination — redetermination.
39-51-2403. Decision of appeals referee.
39-51-2404. Appeal to board.
39-51-2405. Prompt payment of claims.
39-51-2406. Continuing jurisdiction of department over claims.
39-51-2407. Procedure for disputed claims to be prescribed by regulation.
39-51-2408. Disputed claim — records of all proceedings to be kept.
39-51-2409. Witness fees.
39-51-2410. Finality of board's decision — judicial review.

Part 25 — Extended Benefits

39-51-2501. Definitions.
39-51-2502. Repealed.
39-51-2503. Repealed.
39-51-2504. State "on" indicator — when.
39-51-2505. State "off" indicator — when.
39-51-2506. Beginning and termination of extended benefit period — announcement of.
39-51-2507. Effect of state law provisions relating to regular benefits on claims for and the payment of extended benefits.
39-51-2508. Eligibility requirements for extended benefits — disqualifications — acceptance of suitable work.
39-51-2509. Weekly extended benefit amount.
39-51-2510. Total extended benefit amount.
39-51-2511. Extended benefits filed interstate.

Part 26 — Trade Readjustment

39-51-2601. Limitations on weeks of combined extended benefits and trade readjustment allowances.
39-51-2602. Approved training under federal programs.

Parts 27 through 30 reserved

Part 31 — Protections and Limitations on Rights and Benefits

39-51-3101. Protection against self-incrimination.
39-51-3102. Certain agreements in violation of chapter void.
39-51-3103. Employer prohibited from making, requiring, or accepting deduction from wages or requiring or accepting waiver of rights under chapter — penalty for violation.
39-51-3104. Limitation of fees in claim for benefits — penalty for violation.
39-51-3105. Assignment, pledge, or encumbrance of right to benefits void — benefits exempt from levy, execution, attachment, or other remedy for collection of debt — exception.
39-51-3106. Child support interception of unemployment benefits.

Part 32 — General Penalties

39-51-3201. Making false statement or representation or failing to disclose material fact in order to obtain or increase benefits — administrative penalty and remedy.
39-51-3202. Making false statement or representation or failing to disclose material fact in order to obtain or increase benefits — criminal penalty.
39-51-3203. Obtaining benefits through deception or other fraudulent means — criminal penalty.
39-51-3204. Employing unit making false statement or representation, failing to disclose material fact, or failing or refusing to make contributions or other payments, furnish reports, or permit inspection or copying of records — criminal penalty.
39-51-3205. Criminal penalty for violations of chapter where no penalty prescribed.
39-51-3206. Collection of benefit overpayments.

39-51-3207. Authority to determine uncollectibility of debts — transfer of debts for collection — liability for payment of fees and costs of collection.

Part 1
General Provisions

39-51-101. Short title. This chapter shall be known and may be cited as the "Unemployment Insurance Law".

History: En. Sec. 1, Ch. 137, L. 1937; R.C.M. 1947, 87-101; amd. Sec. 1, Ch. 57, L. 1979.

39-51-102. Declaration of state public policy. As a guide to the interpretation and application of this chapter, the public policy of this state is declared to be as follows:

(1) Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state.

(2) Involuntary unemployment is, therefore, a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance.

(3) The legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this state require the enactment of this measure under the police powers of the state for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.

History: En. Sec. 2, Ch. 137, L. 1937; R.C.M. 1947, 87-102.

39-51-103. Nonliability of state — right to benefits subject to provisions of chapter and extent of available funds. (1) Benefits shall be deemed to be due and payable under this chapter only to the extent provided in this chapter and to the extent that moneys are available therefor to the credit of the unemployment insurance fund, and neither the state nor the department shall be liable for any amount in excess of such sums.

(2) The legislature reserves the right to amend or repeal all or any part of this chapter at any time and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this chapter or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this chapter at any time.

History: (1)En. Sec. 18, Ch. 137, L. 1937; amd. Sec. 32, Ch. 368, L. 1975; Sec. 87-147, R.C.M. 1947; (2)En. Sec. 20, Ch. 137, L. 1937; Sec. 87-150, R.C.M. 1947; R.C.M. 1947, 87-147, 87-150; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Cross-References

Laws giving irrevocable privileges prohibited, Art. II, sec. 31, Mont. Const.

Certain retrospective laws prohibited, Art. XIII, sec. 1, Mont. Const.

39-51-104. Chapter to become inoperative if federal act becomes inoperative. If Title III or Title IX of the federal Social Security Act is declared unconstitutional or in any way becomes inoperative, then this chapter shall terminate and cease and have no force and effect as of the date when said title or titles of said act are declared unconstitutional or become inoperative.

History: En. Sec. 22, Ch. 137, L. 1937; R.C.M. 1947, 87-151.

39-51-105. Disbursement of funds if federal act becomes inoperative. If Title III or IX of the federal Social Security Act is declared unconstitutional or in any way is inoperative, this chapter automatically becomes inoperative under the provisions of this chapter and the funds which then remain in the unemployment trust fund shall immediately be paid to the state treasurer to be paid into the unemployment insurance fund and funds there held shall be immediately distributed, upon order of the department, to the employers who have contributed thereto on a proportionate basis. If any part thereof remains undistributed for a period of 1 year it shall be paid to the general fund of the state.

History: En. Subd. (d), Sec. 9, Ch. 137, L. 1937; amd. Sec. 8, Ch. 368, L. 1975; R.C.M. 1947, 87-114; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

39-51-106. Approval by secretary of labor required for chapter to have effect. If the secretary of labor shall fail to approve this chapter, the same shall immediately terminate and have no force and effect.

History: En. Sec. 23, Ch. 137, L. 1937; amd. Sec. 12, Ch. 156, L. 1961; R.C.M. 1947, 87-152.

Part 2
Definitions

39-51-201. General definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period shall be that applicable under the unemployment law of the paying state. For an individual who fails to meet the qualifications of 39-51-2105 or a similar statute of another state due to a temporary total disability as defined in 39-71-116 or a similar statute of another state or the United States, the base period means the first four quarters of the last five quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

(4) "Benefit year", with respect to any individual, means the 52-consecutive-week period beginning with the first day of the calendar week in which such individual files a valid claim for benefits, except that the benefit

year shall be 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

(5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(7) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404(4).

(8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(9) "Employing unit" means any individual or organization, including the state government, any of its political subdivisions or instrumentalities, any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person which has or had in its employ one or more individuals performing services for it within this state, except as provided under 39-51-204(1)(a) and (1)(b). All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is deemed to be employed by such employing unit for the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit has actual or constructive knowledge of the work.

(10) "Employment office" means a free public employment office or branch thereof operated by this state or maintained as a part of a state-controlled system of public employment offices or such other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

(11) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions are required to be paid and from which all benefits provided under this chapter shall be paid.

(12) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct which demonstrates a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or the employer.

(13) "Hospital" means an institution which has been licensed, certified, or approved by the state as a hospital.

(14) "Independent contractor" means an individual who renders service in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under his contract and in fact; and

(b) is engaged in an independently established trade, occupation, profession, or business.

(15) (a) "Institution of higher education", for the purposes of this part, means an educational institution which:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which it awards a bachelor's or higher degree or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state are institutions of higher education for purposes of this part.

(16) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.

(17) "Taxes" means contributions and assessments required under this chapter but does not include penalties or interest for past-due or unpaid contributions or assessments.

(18) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter shall be paid.

(19) (a) "Wages" means all remuneration payable for personal services, including commissions and bonuses, the cash value of all remuneration payable in any medium other than cash, and backpay received pursuant to a dispute related to employment. The reasonable cash value of remuneration payable in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the department.

(b) The term "wages" does not include:

(i) the amount of any payment made by the employer, if the payment was made under a plan established for the employees in general or for a specific class or classes of employees, to or on behalf of the employee for:

(A) retirement;

(B) sickness or accident disability under a workers' compensation law;

(C) medical and hospitalization expenses in connection with sickness or accident disability; or

(D) death;

(ii) remuneration paid by any county welfare office from public assistance funds for services performed at the direction and request of such county welfare office; or

(iii) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, or other expenses, as set forth in department rules.

(20) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(21) An individual's "weekly benefit amount" means the amount of benefits the individual would be entitled to receive for 1 week of total unemployment.

History: (1), (14), (18) thru (21)En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969; amd. Sec. 33, Ch. 368, L. 1975; amd. Sec. 1, Ch. 115, L. 1977; Sec. 87-149, R.C.M. 1947; (2), (4) thru (13), (15) thru (17)En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. 1, Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973; amd. Sec. 3, Ch. 323, L. 1975; amd. Sec. 1, Ch. 523, L. 1977; Sec. 87-148, R.C.M. 1947; (3)En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; Sec. 87-109, R.C.M. 1947; R.C.M. 1947, 87-109(part), 87-148(a) thru (h), (k) thru (p), 87-149(part); amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 170, L. 1979; amd. Sec. 36, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 245, L. 1983; amd. Sec. 1, Ch. 23, L. 1985; amd. Sec. 1, Ch. 125, L. 1985; amd. Sec. 1, Ch. 461, L. 1985; amd. Sec. 1, Ch. 234, L. 1987; amd. Sec. 1, Ch. 314, L. 1987; amd. Sec. 95, Ch. 370, L. 1987; amd. Sec. 1, Ch. 618, L. 1989; amd. Sec. 1, Ch. 261, L. 1991; amd. Sec. 1, Ch. 373, L. 1991.

39-51-202. Employer defined. "Employer" means:

(1) any employing unit whose total annual payroll within either the current or preceding calendar year equals or exceeds the sum of $1,000;

(2) any agricultural employing unit that pays $20,000 or more in cash to workers for agricultural labor in any quarter in the current or preceding calendar year or employs 10 or more workers in agricultural labor on 20 days in 20 different weeks during the current or preceding calendar year;

(3) any domestic employing unit that pays $1,000 or more in cash for domestic service in any quarter during the current or preceding calendar year;

(4) any individual or employing unit which acquired the organization, trade, or business or substantially all of the assets thereof of another which at the time of such acquisition was an employer subject to this chapter;

(5) any individual or employing unit which acquired the organization, trade, or business or substantially all the assets thereof of another employing unit not an employer subject to this chapter and which, if subsequent to such acquisition it were treated as a single unit with such other employing unit, would be an employer under subsection (1) of this section;

(6) any employing unit not an employer by reason of any other subsection of this section for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable

for any federal tax against which credit may be taken for contributions paid into a state unemployment fund or an employing unit which, as a condition for approval of this chapter for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required pursuant to such act to be an employer under this chapter;

(7) any employing unit which, having become an employer under subsection (1), (2), (3), (4), (5), or (6) has not, under 39-51-1101, ceased to be an employer subject to this chapter; or

(8) for the effective period of its election pursuant to 39-51-1102, any other employing unit which has elected to become fully subject to this chapter.

History: En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. 1, Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973; amd. Sec. 3, Ch. 323, L. 1975; amd. Sec. 1, Ch. 523, L. 1977; R.C.M. 1947, 87-148(part); amd. Sec. 37, Ch. 397, L. 1979; amd. Sec. 2, Ch. 125, L. 1985; amd. Sec. 2, Ch. 618, L. 1989; amd. Sec. 2, Ch. 373, L. 1991.

Cross-References

"Annual payroll" defined, 39-51-201.
"Contributions" defined, 39-51-201.
"Employing unit" defined, 39-51-201.
"Fund" defined, 39-51-201.

39-51-203. Employment defined. (1) "Employment", subject to other provisions of this section, means service by an individual or by an officer of a corporation, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(2) (a) The term "employment" includes an individual's entire service performed within or both within and without this state if:

(i) the service is localized in this state; or

(ii) the service is not localized in any state but some of the service is performed in this state and:

(A) the base of operations or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or

(B) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(b) Service is considered to be localized within a state if:

(i) the service is performed entirely within such state; or

(ii) the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(3) Service not covered under subsection (2) of this section and performed entirely without this state with respect to no part of which contributions are required and paid under an unemployment insurance law of any other state or of the federal government is considered to be employment subject to this chapter if the individual performing such services is a resident of this state and the department approves the election of the employing unit for whom such services are performed that the entire service of such individual is considered to be employment subject to this chapter.

(4) Service performed by an individual for wages is considered to be employment subject to this chapter unless and until it is shown to the satisfaction of the department that the individual is an independent contractor.

(5) The term "employment" includes service performed by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one or more other states or their instrumentalities) for a hospital or institution of higher education located in this state. The term "employment" includes service performed by all individuals, including without limitations those individuals who work for the state of Montana, its universities, any of its colleges, public schools, components or units thereof, or any local government unit and one or more other states or their instrumentalities or political subdivisions whose services are compensated by salary or wages.

(6) The term "employment" includes service performed by an individual in the employ of a religious, charitable, scientific, literary, or educational organization.

(7) (a) The term "employment" includes the service of an individual who is a citizen of the United States performed outside the United States, except in Canada, in the employ of an American employer, other than service which is considered employment under the provisions of subsection (2) of this section or the parallel provisions of another state's law, if:

(i) the employer's principal place of business in the United States is located in this state;

(ii) the employer has no place of business in the United States, but:

(A) the employer is an individual who is a resident of this state;

(B) the employer is a corporation which is organized under the laws of this state; or

(C) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(iii) none of the criteria of sections (7)(a)(i) and (7)(a)(ii) of this subsection are met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits based on such service under the law of this state.

(b) An "American employer", for purposes of this subsection, means a person who is:

(i) an individual who is a resident of the United States;

(ii) a partnership if two-thirds or more of the partners are residents of the United States;

(iii) a trust if all of the trustees are residents of the United States; or

(iv) a corporation organized under the laws of the United States or of any state.

History: En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. 1, Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973; amd. Sec. 3, Ch. 323, L. 1975; amd. Sec. 1, Ch. 523, L. 1977; R.C.M. 1947, 87-148(part); amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 38, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd.

Sec. 2, Ch. 234, L. 1987; amd. Sec. 2, Ch. 314, L. 1987; amd. Sec. 3, Ch. 618, L. 1989; amd. Sec. 3, Ch. 373, L. 1991.

Cross-References

"Benefits" defined, 39-51-201.
"Contributions" defined, 39-51-201.
"Department" defined, 39-51-201.
"Employing unit" defined, 39-51-201.
"Hospital" defined, 39-51-201.
"Institution of higher education" defined, 39-51-201.
"State" defined, 39-51-201.
"Wages" defined, 39-51-201.
"Week" defined, 39-51-201.

39-51-204. Exclusions from definition of employment. (1) The term "employment" does not include:

(a) agricultural labor, except as provided in 39-51-202(2). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked, for the subject wages attributable to agricultural labor; and

(ii) keeps separate books and records to account for the employment of persons in agricultural labor.

(b) household and domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and has domestic service employment, all employees engaged in domestic service must be excluded from coverage under this chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic service; and

(ii) keeps separate books and records to account for the employment of persons in domestic service.

(c) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(d) service performed by an individual in the employ of that individual's son, daughter, or spouse and service performed by a child under the age of 21 in the employ of the child's father or mother;

(e) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law may not be entitled to exemption under this subsection and are subject to this chapter the same as state banks, provided that the service is excluded from employment as defined in the Federal Unemployment Tax Act by section 3306(c)(7) of that act;

(f) service with respect to which unemployment insurance is payable under an unemployment insurance system established by an act of congress, provided that the department shall enter into agreements with the proper agencies under an act of congress, which agreements become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under an act of congress or who have, after acquiring potential rights to unemployment insurance under the act of congress, acquired rights to benefits under this chapter;

(g) services performed as a newspaper carrier or free-lance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection:

(i) "free-lance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(h) services performed by real estate, securities, and insurance salespeople paid solely by commissions and without guarantee of minimum earnings;

(i) service performed in the employ of a school, college, or university if the service is performed by a student who is enrolled and is regularly attending classes at a school, college, or university or by the spouse of a student if the spouse is advised, at the time the spouse commences to perform the service, that the employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by the school, college, or university and the employment will not be covered by any program of unemployment insurance;

(j) service performed by an individual who is enrolled at a nonprofit or public educational institution, which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at an institution that combines academic instruction with work experience if the service is an integral part of the program and the institution has certified that fact to the employer, except that this subsection does not apply to service performed in a program established for or on behalf of an employer or group of employers;

(k) service performed in the employ of a hospital if the service is performed by a patient of the hospital;

(l) services performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber who is licensed under Title 37, chapter 30, and:

(i) who has acknowledged in writing that the cosmetologist or barber is not covered by unemployment insurance and workers' compensation;

(ii) who contracts with a cosmetology salon as defined in 37-31-101 or a barbershop as defined in 37-30-101, which contract must show that the cosmetologist or barber:

(A) is free from all control and direction of the owner in the contract;

(B) receives payment for services from individual clientele; and

(C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or knowledge; and

(iii) whose contract gives rise to an action for breach of contract in the event of contract termination (the existence of a single license for the cosmetology salon or barbershop may not be construed as a lack of freedom from control or direction under this subsection);

(m) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for the service is $50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. "Regularly employed" means the services are performed during at least 24 days in the same quarter.

(n) employment of sole proprietors or working members of a partnership;

(o) services performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;

(iii) may perform services for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the services; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements.

(2) "Employment" does not include elected public officials.

(3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:

(a) in the employ of a church or convention or association of churches or an organization that is operated primarily for religious purposes and that is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(b) by a duly ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(c) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving rehabilitation or remunerative work;

(d) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or any agency of a state or political subdivision of the state by an individual receiving work relief or work training; or

(e) for a state prison or other state correctional or custodial institution by an inmate of that institution.

(4) An individual found to be an independent contractor by the department under the terms of 39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to 39-51-2402.

(5) This section does not apply to a state or local governmental entity or a nonprofit organization defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from employment as defined in the Federal Unemployment Tax Act.

History: En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. 1, Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973; amd. Sec. 3, Ch. 323, L. 1975; amd. Sec. 1, Ch. 523, L. 1977; R.C.M. 1947, 87-148(part); amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 67, L. 1979; amd. Sec. 39, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 357, L. 1983; amd. Sec. 3, Ch. 125, L. 1985; amd. Sec. 3, Ch. 234, L. 1987; amd. Sec. 1, Ch. 526, L. 1987; amd. Sec. 4, Ch. 618, L. 1989; amd. Sec. 4, Ch. 373, L. 1991; amd. Sec. 1, Ch. 573, L. 1991; amd. Sec. 1, Ch. 171, L. 1993; amd. Sec. 11, Ch. 473, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 171 in (4) inserted second sentence regarding an independent contractor's ability to file a claim and receive a determination; inserted (5) precluding application of the section to certain state or local government entities and nonprofit organizations; and made minor changes in style. Amendment effective March 25, 1993.

Chapter 473 in (1)(l), in two places, substituted "cosmetology salon" for "cosmetological establishment".

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

"Benefits" defined, 39-51-201.

"Calendar quarter" defined, 39-51-201.

"Department" defined, 39-51-201.

"Hospital" defined, 39-51-201.

"Institution of higher education" defined, 39-51-201.

"State" defined, 39-51-201.

39-51-205. Agricultural labor defined. (1) The term "agricultural labor" includes all services performed prior to January 1, 1972, which was agricultural labor as defined in this section prior to such date and remunerated services performed after December 31, 1971:

(a) on a farm, in the employ of any person in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(b) in the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment or in salvaging timber or clearing land of brush and other debris left by a hurricane if the major part of such service is performed on a farm;

(c) in connection with the production or harvesting of any commodity commonly known as agricultural commodities or in connection with the hatching of poultry or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes, except where such ditches, canals, reservoirs, or waterways are owned and operated by government entities;

(d) in the employ of the operator of a farm or a group of operators of farms or a cooperative organization of which such operators are members in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market in its unmanufactured state any agricultural or horticultural commodity, but only if such operator or operators produced more than one-half of the commodity with respect to which such service is performed.

(2) The provisions of subsections (1)(a), (1)(b), (1)(c), and (1)(d) of this section shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption or on a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

(3) As used in this section, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards.

History: En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. 1, Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973; amd. Sec. 3, Ch. 323, L. 1975; amd. Sec. 1, Ch. 523, L. 1977; R.C.M. 1947, 87-148(part).

39-51-206. Agricultural labor — who treated as employer of member of a crew furnished by a crew leader. (1) For the purposes of 39-51-203, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader if:

(a) such crew leader holds a valid certificate of registration under the Migrant and Seasonal Agricultural Worker Protection Act, as amended (29 U.S.C. 1801, et seq.); or

(b) (i) substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment which is provided by such crew leader; and

(ii) such individual is not an employee of such other person for whom services in agricultural labor are performed.

(2) In the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under subsection (1):

(a) such other person and not the crew leader shall be treated as the employer of such individual; and

(b) such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader, either on his own behalf or on behalf of such other person, for the service in agricultural labor performed for such other person.

(3) The term "crew leader" means an individual who:

(a) furnishes individuals to perform service in agricultural labor for any other person;

(b) pays, either on his own behalf or on behalf of such other person, the individuals so furnished by him for the service in agricultural labor performed by them; and

(c) has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

History: En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. 1, Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973; amd. Sec. 3, Ch. 323, L. 1975; amd. Sec. 1, Ch. 523, L. 1977; R.C.M. 1947, 87-148(part); amd. Sec. 5, Ch. 618, L. 1989; amd. Sec. 5, Ch. 373, L. 1991.

Part 3

General Administrative Provisions

39-51-301. Administration — duties and powers of department. (1) It shall be the duty of the department to administer this chapter and it shall have power and authority to adopt, amend, or rescind such rules, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable to that end.

(2) The department shall determine its own organization and methods of procedure in accordance with the provisions of this chapter and shall have an official seal, which shall be judicially noticed.

(3) Whenever the department believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly so inform the governor and the legislature and make recommendations with respect thereto.

(4) The department and the board may issue subpoenas and compel testimony and the production of evidence, including books and records, in regard to any investigation or proceeding under this chapter.

History: En. Subd. (a), Sec. 11, Ch. 137, L. 1937; amd. Sec. 6, Ch. 156, L. 1961; amd. Sec. 40, Ch. 93, L. 1969; amd. Sec. 11, Ch. 368, L. 1975; R.C.M. 1947, 87-120; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 11, Ch. 125, L. 1983; amd. Sec. 4, Ch. 125, L. 1985.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

Civil rules on subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

"Benefits" defined, 39-51-201.

"Contributions" defined, 39-51-201.

"Department" defined, 39-51-201.

"Fund" defined, 39-51-201.

39-51-302. Administrative rules. The department may adopt procedural and substantive rules necessary to implement this chapter.

History: En. Subd. (b), Sec. 11, Ch. 137, L. 1937; amd. Sec. 12, Ch. 368, L. 1975; R.C.M. 1947, 87-121; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 5, Ch. 125, L. 1985.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

"Department" defined, 39-51-201.

39-51-303. Publication and distribution of materials. The department shall cause to be printed for distribution to the public the text of this chapter, the department's regulations and general and special rules, and any other material the department considers relevant and suitable and shall furnish the same to any person upon application.

History: En. Subd. (c), Sec. 11, Ch. 137, L. 1937; amd. Sec. 13, Ch. 368, L. 1975; R.C.M. 1947, 87-122; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 370, L. 1989.

Cross-References

"Department" defined, 39-51-201.

39-51-304. Personnel. The department shall hire personnel to administer this chapter in accordance with merit system principles adopted by the department of administration.

History: En. Subd. (d), Sec. 11, Ch. 137, L. 1937; amd. Sec. 14, Ch. 368, L. 1975; R.C.M. 1947, 87-123; amd. Sec. 40, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 6, Ch. 125, L. 1985.

Cross-References

"Department" defined, 39-51-201.

39-51-305. Department to appoint appeals referees. To hear and decide disputed claims, the department shall appoint such impartial salaried appeals referees as are necessary for the proper administration of this chapter in accordance with 39-51-304. No person shall participate on behalf of the department in any case in which he is an interested party. The department may designate alternates to serve in the absence or disqualification of an appeals referee.

History: En. Sec. 6 (a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973; amd. Sec. 3, Ch. 368, L. 1975; amd. Sec. 1, Ch. 20, L. 1977; R.C.M. 1947, 87-107(d); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 7, Ch. 125, L. 1985.

Cross-References

"Department" defined, 39-51-201.

39-51-306. Repealed. Sec. 5, Ch. 349, L. 1981.

History: En. Subd. (b), Sec. 10, Ch. 137, L. 1937; amd. Sec. 2, Ch. 132, L. 1969; amd. Sec. 10, Ch. 368, L. 1975; R.C.M. 1947, 87-118.

39-51-307. Department to create employment service. (1) The department shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this chapter and for the purpose of performing such duties as are within the purview of the act of congress entitled, "An act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes", approved June 6, 1933 (48 Stat. 113; U.S.C. Title 29, Sec. 49 (c)), as amended.

(2) The department shall be charged with the duty to cooperate with any official or agency of the United States having power or duties under the provisions of the act of congress, as amended, and to do and perform all things necessary to secure to this state the benefits of the act of congress, as amended, in the promotion and maintenance of a system of public employment offices.

(3) The provisions of the act of congress, as amended, are hereby accepted by this state in conformity with section 4 of said act, and this state will observe and comply with the requirements thereof. The department is hereby designated and constituted the agency of this state for the purpose of said act.

(4) For the purpose of establishing and maintaining free public employment offices, the department is authorized to enter into agreements with any political subdivisions of this state or with any private, nonprofit organization and as a part of any such agreement the department may accept money, services, or quarters as a contribution to the employment service account.

History: En. Sec. 12, Ch. 137, L. 1937; amd. Sec. 6, Ch. 164, L. 1941; amd. Sec. 21, Ch. 368, L. 1975; R.C.M. 1947, 87-132; amd. Sec. 2, Ch. 349, L. 1981.

Cross-References

"Department" defined, 39-51-201.

39-51-308. Acquisition and disposition of property by department. (1) Subject to the approval of the department of administration, the department may purchase such equipment, supplies, and real property as it may deem necessary and proper. The title to any real property purchased shall be taken in the name of the state of Montana.

(2) Subject to the approval of the department of administration, the department may sell any equipment, supplies, or real property previously acquired by it, and the proceeds of such sale shall be deposited into the unemployment insurance administration fund.

(3) In the event the duties or any part thereof of the department shall be at any time in the future surrendered to or taken over by the federal government or any agency thereof, the department, with the approval of the department of administration, may lease such equipment and real property to the federal government or such agency, but the title thereto shall remain in the state of Montana.

History: En. as Sec. 11-A of Ch. 137, L. 1937 by Sec. 6, Ch. 233, L. 1943; amd. Sec. 8, Ch. 171, L. 1957; amd. Sec. 19, Ch. 368, L. 1975; amd. Sec. 17, Ch. 343, L. 1977; R.C.M. 1947, 87-130; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Cross-References

Department of Administration, Title 2, ch. 15, part 10.

Public Contracts, Title 18.

"Department" defined, 39-51-201.

"Fund" defined, 39-51-201.

39-51-309. Representation of department and state in court. (1) In any civil action to enforce the provisions of this chapter the department and the state may be represented by any qualified attorney who is employed by the department and is designated by it for this purpose or, at the department's or board's request, by the attorney general.

(2) All criminal actions for violation of any provision of this chapter or of any rules issued pursuant thereto shall be prosecuted by the attorney general of the state or, at his request and under his direction, by the county attorney of the county wherein the crime was committed.

History: En. Sec. 17, Ch. 137, L. 1937; amd. Sec. 8, Ch. 164, L. 1955; amd. Sec. 31, Ch. 368, L. 1975; R.C.M. 1947, 87-146; amd. Sec. 41, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Cross-References

Duties of Attorney General, 2-15-501.

"Department" defined, 39-51-201.

39-51-310. Function of board. The board shall act in a quasi-judicial capacity for the hearing of disputes concerning the administration of Montana's unemployment insurance laws and disputes arising under Title 39, chapter 71, not concerning benefits, regarding whether an individual is an employee or an independent contractor as defined in that chapter.

History: En. 82A-1008 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1008(4); amd. Sec. 3, Ch. 314, L. 1987.

Cross-References

Quasi-judicial boards, 2-15-124.

"Board" defined, 39-51-201.

Part 4
Financial Administration

39-51-401. Unemployment insurance fund — establishment and control. There is hereby established separate and apart from all public money or funds of this state a fund in the expendable trust fund type known as the unemployment insurance fund, which shall be administered by the department exclusively for the purposes of this chapter. Any reference to the unemployment insurance fund in this code means the unemployment insurance expendable trust fund. All money in the fund shall be mingled and undivided. This fund shall consist of:

(1) all contributions collected under this chapter and payments made in lieu of contributions as provided in 39-51-1124 through 39-51-1126;

(2) interest earned upon any money in the fund;

(3) any property or securities acquired through the use of money belonging to the fund;

(4) all earnings of such property or securities; and

(5) all money credited to this state's account in the unemployment trust fund pursuant to section 903 of the Social Security Act, as amended.

History: En. Subd. (a), Sec. 9, Ch. 137, L. 1937; amd. Sec. 2, Ch. 190, L. 1945; amd. Sec. 4, Ch. 171, L. 1957; amd. Sec. 206, Ch. 147, L. 1963; amd. Sec. 1, Ch. 88, L. 1971; amd. Sec. 5, Ch. 368, L. 1975; R.C.M. 1947, 87-111; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 42, Ch. 397, L. 1979; amd. Sec. 17, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 21, Ch. 281, L. 1983.

Cross-References

State treasury fund structure, Title 17, ch. 2.

"Contributions" defined, 39-51-201.

"Department" defined, 39-51-201.

"Fund" defined, 39-51-201.

39-51-402. Unemployment insurance fund — custodian — accounts and deposits. (1) The commissioner of labor and industry is the ex officio treasurer and custodian of the unemployment insurance fund and shall administer such fund in accordance with this chapter. He shall maintain within the fund three separate accounts:

(a) a clearing account;

(b) an unemployment trust fund account; and

(c) a benefit account.

(2) All money payable to the unemployment insurance fund, upon receipt by the department, must be immediately deposited in the clearing account. Refunds payable pursuant to 39-51-1110 may be paid from the clearing account. After clearance thereof, all other money in the clearing account must be immediately deposited with the secretary of the treasury of the United States to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act, as amended.

(3) The benefit account consists of all money requisitioned for the payment of benefits from this state's account in the unemployment trust fund.

(4) Except as herein otherwise provided, money in the clearing and benefit accounts may be deposited in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium may be paid out of the unemployment insurance fund.

History: En. Subd. (b), Sec. 9, Ch. 137, L. 1937; amd. Sec. 5, Ch. 171, L. 1957; amd. Sec. 207, Ch. 147, L. 1963; amd. Sec. 6, Ch. 368, L. 1975; R.C.M. 1947, 87-112; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 43, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 22, Ch. 281, L. 1983; amd. Sec. 8, Ch. 125, L. 1985.

Cross-References

Ex officio State Treasurer, 2-15-1002.
"Benefits" defined, 39-51-201.
"Department" defined, 39-51-201.
"Fund" defined, 39-51-201.

39-51-403. Money to be requisitioned from unemployment trust fund solely for payment of benefits — exception. (1) Money shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the department, except that money credited to this state's account pursuant to section 903 of the Social Security Act, as amended, may also be withdrawn for the payment of expenses for the administration of this chapter and of public employment offices, as provided by this chapter.

(2) The department shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to this state account therein, as it deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof, the treasurer shall deposit such money in the benefit account and shall issue his warrants for the payment of benefits solely from such benefit account.

(3) Expenditures of such money in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody.

(4) Any balance of money requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for and may be utilized for the payment of benefits during succeeding periods or, in the discretion of the department, shall be redeposited with the secretary of the treasury of the United States to the credit of this state's account in the unemployment trust fund, as provided in 39-51-402.

History: En. Subd. (c), Sec. 9, Ch. 137, L. 1937; amd. Sec. 6, Ch. 171, L. 1957; amd. Sec. 7, Ch. 368, L. 1975; R.C.M. 1947, 87-113(a); amd. Sec. 1, Ch. 349, L. 1981.

Cross-References

"Benefits" defined, 39-51-201.
"Department" defined, 39-51-201.
"Fund" defined, 39-51-201.

39-51-404. Administrative expenses. (1) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States pursuant to section 903 of the Social Security Act, as amended, may be requisitioned and used for the payment of expenses incurred for the administration of this chapter pursuant to a specific appropriation by the legislature if the expenses are incurred and the money is requisitioned after the enactment of an appropriation law that:

(a) specifies the purposes for which the money is appropriated and the amounts appropriated;

(b) limits the period within which the money may be expended to a period ending not more than 2 years after the date of the enactment of the appropriation law; and

(c) limits the amount that may be used during any 12-month period beginning on July 1 and ending on the next June 30 to an amount not exceeding the amount by which the aggregate of the amounts credited to the account of this state pursuant to section 903 of the Social Security Act, as amended, during the same 12-month period and the 34 preceding 12-month periods exceeds the aggregate of the amounts used pursuant to this section and charged against the amounts credited to the account of this state during any of the 35 12-month periods.

(2) For the purposes of this section, amounts used during any 12-month period must be charged against equivalent amounts that were first credited and that are not already charged, except that an amount used for administration during any 12-month period may not be charged against any amount credited during a 12-month period earlier than the 34th preceding period. Money requisitioned for the payment of expenses of administration pursuant to this section must be deposited in the unemployment insurance administration account but, until expended, must remain a part of the unemployment insurance fund.

(3) The department shall maintain a separate record of the deposit, obligation, expenditure, and return of funds deposited. If any money deposited is for any reason not to be expended for the purpose for which it was appropriated or if it remains unexpended at the end of the period specified by the law appropriating the money, it must be withdrawn and returned to the secretary of the treasury of the United States for credit to this state's account in the unemployment trust fund.

(4) An assessment equal to .1% of all taxable wages provided for in 39-51-1108 and .05% of total wages paid by employers not covered by an experience rating must be levied against and paid by all employers. All assessments and investment income must be deposited in the employment security account provided for in 39-51-409.

History: En. Subd. (c), Sec. 9, Ch. 137, L. 1937; amd. Sec. 6, Ch. 171, L. 1957; amd. Sec. 7, Ch. 368, L. 1975; R.C.M. 1947, 87-113(b); amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 251, L. 1983; amd. Sec. 23, Ch. 281, L. 1983; (4)En. Sec. 1, Ch. 304, L. 1983; amd. Sec. 2, Ch. 461, L. 1985; amd. Sec. 1, Ch. 422, L. 1989; amd. Sec. 1, Ch. 15, Sp. L. January 1992; amd. Sec. 1, Ch. 173, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 173 in (4), at beginning of first sentence, deleted "Beginning with the third quarter of 1983" and at end, after "employers", deleted "and may be used by the department for administrative purposes", near beginning of second sentence, after "assessments", inserted "and investment income" and at end substituted "the employment security account provided for in 39-51-409" for "the unemployment insurance administration account provided for in 39-51-406 and used as appropriated by the legislature", and deleted former third sentence that read: "Any assessments deposited to the unemployment insurance administration account, including investment income, that are not appropriated by the legislature must be transferred to the unemployment trust fund account provided for in 39-51-402"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

"Department" defined, 39-51-201.

"Fund" defined, 39-51-201.

39-51-405. Signatures required on warrants. All warrants issued by the treasurer for payment pursuant to 39-51-403 or 39-51-404 shall bear the signature of the treasurer and the countersignature of a member of the department or its duly authorized agent for that purpose.

History: En. Subd. (c), Sec. 9, Ch. 137, L. 1937; amd. Sec. 6, Ch. 171, L. 1957; amd. Sec. 7, Ch. 368, L. 1975; R.C.M. 1947, 87-113(c); amd. Sec. 1, Ch. 349, L. 1981.

Cross-References

Warrants for payment of state funds, 17-8-301.

"Department" defined, 39-51-201.

39-51-406. Unemployment insurance administration account. (1) There is an account in the federal special revenue fund to be known as the unemployment insurance administration account. All money that is deposited, appropriated, or paid into this account is appropriated and made available to the department. All money in the account must be expended solely for the purpose of defraying the costs of administration of this chapter and costs of administration of other legislation specifically delegated by the legislature to the department for administration.

(2) All money received and deposited in the account from the United States or any agency of the United States pursuant to section 302, Title III, of the Social Security Act must be expended solely for the purpose and in the amounts found necessary by the secretary of labor for the proper and efficient administration of this chapter.

(3) The account consists of:

(a) all money received from the United States or any agency of the United States pursuant to section 302, Title III, of the Social Security Act, as amended;

(b) all money appropriated by the state from the general fund for the purpose of administering this chapter; and

(c) all money, trust funds, supplies, facilities, or services furnished, deposited, paid, and received from:

(i) the United States or any agency of the United States;

(ii) this state or any agency of the state;

(iii) any other state or any of its agencies;

(iv) political subdivisions of the state; or

(v) any other source for administrative expense and purpose.

(4) Notwithstanding any provisions of this section, all money requisitioned and deposited in this account pursuant to 39-51-403 through 39-51-405 must remain part of the unemployment insurance fund and must be used only in accordance with the conditions specified in 39-51-403 through 39-51-405.

(5) All money in this account must be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other accounts. The balance in this account may not lapse at any time but must be continuously available to the department for expenditure consistent with this chapter.

(6) The state treasurer shall give a separate and additional bond conditioned upon the faithful performance of the treasurer's duties in connection

with the unemployment insurance administration account in an amount to be fixed by the department and in a form prescribed by law or approved by the attorney general. The premiums for the bond must be paid from the money in the unemployment insurance administration account.

(7) Any reference to the unemployment insurance administration fund in this code means the unemployment insurance administration account in the federal special revenue fund.

History: **En. Subd. (a), Sec. 13, Ch. 137, L. 1937; amd. Sec. 7, Ch. 164, L. 1941; amd. Sec. 4, Ch. 190, L. 1945; amd. Sec. 4, Ch. 164, L. 1955; amd. Sec. 9, Ch. 171, L. 1957; amd. Sec. 208, Ch. 147, L. 1963; amd. Sec. 22, Ch. 368, L. 1975; R.C.M. 1947, 87-133; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 2, Ch. 277, L. 1983; amd. Sec. 24, Ch. 281, L. 1983; amd. Sec. 1, Ch. 369, L. 1983; amd. Sec. 2, Ch. 15, Sp. L. January 1992; amd. Sec. 61, Ch. 10, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 10 in (6), in last sentence after "bond", deleted "and the premiums for the bond given by the treasurer for the unemployment insurance fund under 39-51-402"; and made minor changes in style.

Cross-References

State treasury fund structure, Title 17, ch. 2.

Guaranty, indemnity, and suretyship, Title 28, ch. 11.

"Contributions" defined, 39-51-201.

"Department" defined, 39-51-201.

"Fund" defined, 39-51-201.

"State" defined, 39-51-201.

39-51-407. Reimbursement of fund by state. This state recognizes its obligation to replace, and hereby pledges the faith of this state that funds will be provided in the future and applied to the replacement of any of the money received from the United States or any agency thereof under Title III of the Social Security Act, any unencumbered balances in the unemployment insurance administration account, any money granted to this state pursuant to the provisions of the Wagner-Peyser Act, and any money made available by the state or its political subdivisions and matched by such money granted to this state pursuant to the provisions of the Wagner-Peyser Act which the secretary of labor finds have, because of any action or contingency, been lost or have been expended for purposes other than or in amounts in excess of those found necessary by the secretary of labor for the proper administration of this chapter. Such money shall be promptly supplied by money furnished by the state of Montana or any of its subdivisions for the use of the department and used only for purposes approved by the secretary of labor. The department shall, if necessary, promptly report to the governor and the governor to the legislature, by a letter to the speaker of the house of representatives and the president of the senate, the amount required for such replacement.

History: **En. as Subd. (b) of Sec. 13, Ch. 137, L. 1937 by Sec. 7, Ch. 164, L. 1941; amd. Sec. 5, Ch. 164, L. 1955; amd. Sec. 23, Ch. 368, L. 1975; R.C.M. 1947, 87-134; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 25, Ch. 281, L. 1983; amd. Sec. 4, Ch. 234, L. 1987; amd. Sec. 34, Ch. 112, L. 1991.**

Cross-References

"Department" defined, 39-51-201.

"Fund" defined, 39-51-201.

39-51-408. Advances from federal unemployment trust fund. (1) The department is authorized to apply for advances on behalf of the state of Montana from its account in the federal unemployment trust fund and to accept responsibility for repayment of such advances in accordance with the conditions specified by congress.

(2) (a) The interest cost, if any, from such advances must be assessed against employers subject to experience rating. Interest cost may not be assessed against state or local government employers covered by 39-51-1212 or against nonprofit organizations making payments in lieu of contributions pursuant to 39-51-1124.

(b) An assessment must be made beginning with the calendar year following the calendar year in which it became necessary to apply for an advance from the federal unemployment trust fund and after the interest charges on the advance have been determined. The rate will be determined by the department based upon the interest charges. This rate must be applied to the employer's taxable wages and be submitted in the same manner as regular contributions but as a separate payment.

(c) The amount received must be deposited in the unemployment insurance account and used to pay interest costs. Any surplus must be used to pay benefits. The department shall maintain separate records of deposits, obligations, and expenditures of all money collected pursuant to this section.

History: En. Sec. 1, Ch. 273, L. 1983.

39-51-409. Employment security account. (1) There is an account created in the state special revenue fund called the employment security account.

(2) The department may transfer funds from the account to the unemployment insurance fund account provided for in 39-51-402 upon receiving approval from the budget director that the transfer will not decrease the money in the account below the level appropriated by the legislature to provide employment office programs.

(3) The department may transfer appropriation authority in the employment office program between the federal special revenue and the state special revenue fund types.

History: En. Sec. 2, Ch. 173, L. 1993.

Compiler's Comments

Effective Date: Section 4, Ch. 173, L. 1993, provided: "[This act] is effective July 1, 1993."

Part 5

Governmental Cooperation

39-51-501. State-federal cooperation. (1) In the administration of this chapter, the department shall:

(a) cooperate to the fullest extent consistent with the provisions of this chapter with the secretary of labor, pursuant to the provisions of the Social Security Act, as amended;

(b) make such reports in such form and containing such information as the secretary of labor may from time to time require and shall comply with such provisions as the secretary of labor may from time to time find necessary to assure the correctness and verification of such reports; and

(c) comply with the regulations prescribed by the secretary of labor governing the expenditures of such sums as may be allotted and paid to this state under Title III of the Social Security Act, as amended, for the purpose of assisting in the administration of this chapter.

(2) The department shall cooperate with the secretary of labor in the administration of any act of congress establishing unemployment insurance benefits or similar benefits for federal employees and veterans or ex-service personnel of the armed forces of the United States and shall do so in such manner as may be deemed advisable and expedient in order to carry out the purpose of this chapter.

(3) The department is hereby authorized and empowered to perform any and all acts, including the execution of agreements and contracts which may be required under and pursuant to any act passed by the congress of the United States, authorizing the extension of unemployment insurance benefits by federal law if the department in its discretion deems it advisable to perform such acts.

(4) Upon request therefor, the department shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this chapter.

History: En. Subd. (i), Sec. 11, Ch. 137, L. 1937; amd. Sec. 7, Ch. 171, L. 1957; amd. Sec. 7, Ch. 156, L. 1961; amd. Sec. 17, Ch. 368, L. 1975; R.C.M. 1947, 87-128; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Cross-References

"Benefits" defined, 39-51-201.

"Department" defined, 39-51-201.

39-51-502. Cooperation with other agencies. (1) The department shall afford reasonable cooperation with any government agency charged with war effort or postwar planning responsibilities or with the administration of any system of unemployment allowances or unemployment assistance or of any program designed to prevent or relieve unemployment.

(2) The department may make and may cooperate with other appropriate state agencies in making studies as to the practicability and probable cost of possible new state-administered social security programs and the relative desirability of state rather than national action in any such field.

(3) The department shall fully cooperate with the agencies of other states and shall make every proper effort within its means to oppose and prevent any further action which would in its judgment tend to effect complete or substantial federalization of state unemployment insurance funds or state unemployment insurance and employment security programs or any part of the social security program.

History: En. as Sec. 11-B of Ch. 137, L. 1937 by Sec. 6, Ch. 233, L. 1943; amd. Sec. 20, Ch. 368, L. 1975; R.C.M. 1947, 87-131; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Cross-References

"Department" defined, 39-51-201.

"State" defined, 39-51-201.

39-51-503. Agreements with railroad retirement board. The department is hereby authorized to cooperate with and enter into agreements with the railroad retirement board with respect to establishment, maintenance, and use of employment service facilities and to make available to the railroad retirement board the records of the department relating to employer's status and contributions received from employers covered by the Railroad Unemployment Insurance Act, together with employee wage records and such other data as the railroad retirement board may deem necessary or desirable for the administration of the Railroad Unemployment Insurance Act (52 Stat. 1094). Any money received by the department from the railroad retirement board or any other governmental agency with respect to the establishment, maintenance, and use of employment service facilities shall be paid into and credited the proper division of the unemployment insurance administration fund set up and established under 39-51-406 and 39-51-407.

History: En. Sec. 2, Ch. 167, L. 1939; amd. Sec. 9, Ch. 368, L. 1975; R.C.M. 1947, 87-116; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 3, Ch. 349, L. 1981.

Cross-References

"Department" defined, 39-51-201.

39-51-504. Reciprocal benefit arrangements. (1) The department is hereby authorized to enter into arrangements with the appropriate agencies of other states or the federal government whereby individuals performing services in this and other states for a single employing unit under circumstances not specifically provided for in this chapter or under similar provisions of the unemployment insurance laws of such other states shall be deemed to be engaged in employment performed entirely within this state or within one of such other states and whereby potential rights to benefits accumulated under the unemployment insurance laws of several states or under such a law of the federal government or both may constitute the basis for the payment of benefits through a single appropriate agency under terms which the department finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund.

(2) The department shall participate in any arrangements, approved by the U.S. secretary of labor, with the appropriate agencies of the other states or of the federal government whereby wages or services upon the basis of which an individual may become entitled to benefits under the unemployment insurance law of another state or of the federal government shall be deemed to be wages for employment by employers for benefit purposes, provided that:

(a) in any instance involving the combining of an individual's wages and employment covered under two or more state unemployment insurance laws, that the base period of a single state law will be used;

(b) such combining of wages will not involve the duplicate use of such wage credits; and

(c) such other state agency or agency of the federal government has agreed to reimburse the unemployment insurance fund for such portion of benefits paid under this chapter upon the basis of such wages or services as the department finds will be fair and reasonable as to all affected interests, and whereby the department will reimburse other state or federal agencies charged with the administration of unemployment insurance laws with such reasonable portion of benefits paid under the law of any such other states or of the federal government upon the basis of employment or wages for employment by employers as the department finds will be fair and reasonable to all affected interests. Reimbursements so payable shall be deemed to be benefits for the purposes of this chapter.

(3) The department is hereby authorized to make to other state or federal agencies reimbursements from or to the unemployment insurance fund in accordance with arrangements made pursuant to this section.

History: En. Subd. (j), Sec. 11, Ch. 137, L. 1937; amd. Sec. 3, Ch. 190, L. 1945; amd. Sec. 1, Ch. 91, L. 1971; amd. Sec. 18, Ch. 368, L. 1975; R.C.M. 1947, 87-129; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Cross-References

"Base period" defined, 39-51-201.
"Benefits" defined, 39-51-201.
"Department" defined, 39-51-201.
"Employing unit" defined, 39-51-201.
"Fund" defined, 39-51-201.
"State" defined, 39-51-201.
"Wages" defined, 39-51-201.

Part 6

Records and Reports

39-51-601. Department to maintain wage record. The department shall maintain a record of the wages paid to an individual in accordance with wages earned by him for employment by employers during each quarter.

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(f); amd. Sec. 1, Ch. 349, L. 1981.

Cross-References

"Department" defined, 39-51-201.
"Wages" defined, 39-51-201.

39-51-602. Method to be used by department in keeping wage records. Wage records kept by the department for the purposes of this chapter must be kept on the basis of wages paid, except that for the purposes of determining benefit eligibility and the amount and duration of benefits payable, wages, including lump-sum payments of accrued wages, must be assigned to periods of time as determined in accordance with rules adopted by the department.

History: En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969; amd. Sec. 33, Ch. 368, L. 1975; amd. Sec. 1, Ch. 115, L. 1977; R.C.M. 1947, 87-149(part); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 6, Ch. 618, L. 1989; amd. Sec. 6, Ch. 373, L. 1991.

Cross-References

"Department" defined, 39-51-201.
"Wages" defined, 39-51-201.

39-51-603. Employing unit to keep records and make reports. (1) Each employing unit shall keep true and accurate work records containing such information as the department may prescribe. Those records shall be open to inspection and audit and shall be subject to being copied by the department or its authorized representative at any reasonable time and as often as may be necessary.

(2) The department and the chairman of any appeal tribunal may require from any employing unit any sworn or unsworn reports with respect to persons employed by it which the department considers necessary to the effective administration of this chapter.

(3) Information thus obtained or obtained from any individual under this chapter shall, except to the individual claimant to the extent necessary for the proper presentation of a claim, be held confidential and shall not be published or be open to public inspection, except to public employees in the

performance of their public duties, in any manner revealing the individual's or employing unit's identity, but any claimant or his legal representative at a hearing before the board or appeal tribunal shall be supplied with information from the records to the extent necessary for the proper presentation of his claim.

(4) Any employee or member of the department who violates any provision of this section shall be fined not less than $20 or more than $200 or imprisoned for not longer than 90 days or both.

History: En. Subd. (e), Sec. 11, Ch. 137, L. 1937; amd. Sec. 1, Ch. 144, L. 1974; amd. Sec. 15, Ch. 368, L. 1975; R.C.M. 1947, 87-124; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 7, Ch. 373, L. 1991.

Cross-References

"Board" defined, 39-51-201

"Department" defined, 39-51-201.

"Employing unit" defined, 39-51-201.

39-51-604. Exemption. An exemption granted under 39-71-401(3) by the department that a particular employee is an independent contractor or that a particular employment is exempt from the provisions of this chapter must be reported to the state compensation insurance fund.

History: En. Sec. 3, Ch. 573, L. 1991; amd. Sec. 14, Ch. 630, L. 1993.

Compiler's Comments

Name Change — Directions to Code Commissioner: Section 14, Ch. 630, L. 1993, provided: "Wherever the name "state compensation mutual insurance fund", meaning the fund established in 39-71-2313, appears in the Montana Code Annotated or in legislation enacted by the 1993 legislature, the code commissioner is directed to change the name to "state compensation insurance fund"." The phrase appeared in this section and was changed by the Code Commissioner as directed.

Cross-References

Employments covered and employments exempted, 39-71-401.

Parts 7 through 10 reserved

Part 11

Employer Contributions

39-51-1101. Commencement and termination of coverage under chapter. (1) Any employing unit which is or becomes an employer subject to this chapter within any calendar year shall be subject to this chapter during the whole of such calendar year, except that this subsection shall not apply to an employing unit electing coverage as provided for in 39-51-1102.

(2) Except as otherwise provided in 39-51-1102, an employing unit shall cease to be an employer subject to this chapter only as of January 1 of any calendar year only if it files with the department prior to the last day of February of such year a written application for termination of coverage and the department finds that the total wages payable for employment by said employer in the preceding calendar year did not equal or exceed the amount of wages required under 39-51-202 to be considered an employer subject to this chapter. For the purpose of this subsection, the two or more employing units mentioned in 39-51-202(4) or (5) shall be treated as a single employing unit.

History: En. Sec. 8, Ch. 137, L. 1937; amd. Sec. 4, Ch. 137, L. 1939; amd. Sec. 5, Ch. 164, L. 1941; amd. Sec. 1, Ch. 37, L. 1969; amd. Sec. 1, Ch. 103, L. 1971; amd. Sec. 1, Ch.

181, L. 1973; amd. Sec. 2, Ch. 323, L. 1975; R.C.M. 1947, 87-110(a), (b); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 5, Ch. 234, L. 1987; amd. Sec. 8, Ch. 373, L. 1991.

Cross-References

"Department" defined, 39-51-201.

"Employing unit" defined, 39-51-201.

"Wages" defined, 39-51-201.

39-51-1102. Election by employing units not otherwise subject to chapter. An employing unit not otherwise subject to this chapter or any employing unit for which services are performed that do not constitute employment as defined in this chapter may file with the department a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all purposes of this chapter for not less than 2 calendar years. Upon the written approval of such election by the department, such services shall be deemed to constitute employment subject to this chapter from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1 of any calendar year subsequent to such 2 calendar years only if at least 30 days prior to such January 1 such employing unit has filed with the department a written notice to that effect.

History: En. Sec. 8, Ch. 137, L. 1937; amd. Sec. 4, Ch. 137, L. 1939; amd. Sec. 5, Ch. 164, L. 1941; amd. Sec. 1, Ch. 37, L. 1969; amd. Sec. 1, Ch. 103, L. 1971; amd. Sec. 1, Ch. 181, L. 1973; amd. Sec. 2, Ch. 323, L. 1975; R.C.M. 1947, 87-110(c); amd. Sec. 1, Ch. 349, L. 1981.

Cross-References

"Department" defined, 39-51-201.

"Employing unit" defined, 39-51-201.

39-51-1103. Contributions by employers required — payments in lieu thereof authorized for certain employers. (1) Contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this chapter with respect to wages, as defined in 39-51-201, paid for employment, as defined in this chapter, occurring during such calendar year.

(2) Such contributions shall become due and be paid by each employer to the department for the fund in accordance with such regulations as the department may prescribe and shall not be deducted in whole or in part from the wages of individuals in his employ.

(3) In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

(4) Nonprofit organizations defined in section 501(c)(3) of the federal Internal Revenue Code and which are exempt from tax under section 501(a) of such code may elect to make payments in lieu of contributions.

(5) The state and its political subdivisions, effective January 1, 1977, may elect to make payments in lieu of contributions or pay under a special contributions plan established for governmental entities only.

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(part); amd. Sec. 18, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 9, Ch. 125, L. 1985.

Cross-References

"Contributions" defined, 39-51-201.

"Department" defined, 39-51-201.

"Fund" defined, 39-51-201.

"Wages" defined, 39-51-201.

39-51-1104. Duty and liability of contractor and subcontractor, respectively, in regard to taxes, penalties, and interest owed by subcontractor. (1) Any contractor who is or becomes an employer under the provisions of this chapter who contracts with any subcontractor who also is or becomes an employer under the provisions of this chapter shall withhold sufficient money on the contract to guarantee that all taxes, penalties, and interest are paid upon completion of the contract.

(2) It shall be the duty of any subcontractor who is or becomes an employer under the provisions of this chapter to furnish the contractor with a certification issued by the department, prior to final payment for the particular job, stating that said subcontractor is current and in full compliance with the provisions of this chapter.

(3) Failure to comply with the provisions of this section shall render the contractor directly liable for all taxes, penalties, and interest due from the subcontractor on the particular job, and the administrator has all of the remedies of collection against the contractor under the provisions of this chapter as though the services in question were performed directly for the contractor.

History: En. Subd. (b), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 1, Ch. 36, L. 1969; amd. Sec. 1, Ch. 105, L. 1975; amd. Sec. 25, Ch. 368, L. 1975; amd. Sec. 1, Ch. 386, L. 1977; R.C.M. 1947, 87-136(3); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 9, Ch. 373, L. 1991.

Cross-References

"Contributions" defined, 39-51-201.

"Department" defined, 39-51-201.

39-51-1105. Liability of corporate officers for taxes, penalties, and interest owed by corporation. When a corporation subject to Montana corporate law has failed to file the annual corporation report with the Montana secretary of state as required by law the department shall hold the president, vice-president, secretary, and treasurer jointly and severally liable for any taxes, penalties, and interest due for the period in which the corporation is delinquent in filing the annual corporation report. If the required annual corporation report is made and filed after the time specified, such officers may not, on account of prior failure to make report, be held liable for the taxes, penalties, and interest thereafter accruing.

History: En. Subd. (b), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 1, Ch. 36, L. 1969; amd. Sec. 1, Ch. 105, L. 1975; amd. Sec. 25, Ch. 368, L. 1975; amd. Sec. 1, Ch. 386, L. 1977; R.C.M. 1947, 87-136(4); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 10, Ch. 373, L. 1991.

Cross-References

"Contributions" defined, 39-51-201.

"Department" defined, 39-51-201.

39-51-1106. Repealed. Sec. 21, Ch. 685, L. 1979.

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(part); amd. Sec. 2, Ch. 57, L. 1979.

39-51-1107. Repealed. Sec. 21, Ch. 685, L. 1979.

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(b)(3).

39-51-1108. Amount of wages per employee subject to contribution. (1) Payment of contributions shall apply only to wages paid up to and including the amount specified in this section by an employer to an employee with respect to employment.

(2) The taxable wage base for each year is the greater of 80% of the average annual wage as determined under 39-51-2201 (rounded to the nearest $100) during the calendar year immediately preceding the most recently completed calendar year, or the amount of taxable wage base specified in the Federal Unemployment Tax Act.

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(d); amd. Sec. 8, Ch. 685, L. 1979; amd. Sec. 2, Ch. 371, L. 1985.

Cross-References

"Calendar quarter" defined, 39-51-201.
"Contributions" defined, 39-51-201.
"Wages" defined, 39-51-201.

39-51-1109. Tax appeals. A decision, determination, or redetermination of the department involving contribution liability, contribution rate, application for refund, employment status, or the charging of benefit payments to employers making payment in lieu of contributions is final unless an interested party entitled to notice thereof applies for an appeal to an appeals referee. The appeal must be made in the same manner as provided in 39-51-2402 for the appeal of a decision relating to a claim for unemployment insurance benefits. Statutory rules of evidence and civil procedure do not apply to hearings in the appeal. The decision of the appeals referee and any appeal therefrom must be made in the same manner as prescribed in 39-51-2403 through 39-51-2410.

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(e); amd. Sec. 44, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 10, Ch. 125, L. 1985; amd. Sec. 6, Ch. 234, L. 1987; amd. Sec. 4, Ch. 314, L. 1987; amd. Sec. 1, Ch. 302, L. 1989.

Cross-References

"Department" defined, 39-51-201.

39-51-1110. Refunds to employers. (1) If not later than 3 years after the date on which any taxes or interest thereon became due or not later than 1 year from the date on which payment was made, whichever is later, an employer who has paid such taxes or interest thereon shall make application for an adjustment thereof in connection with subsequent tax payments or for a refund thereof because such adjustment cannot be made and the department shall determine that such taxes or interest or any portion thereof was erroneously collected, the department shall allow such employer to make an adjustment thereof, without interest, in connection with subsequent tax payments by him or, if such adjustment cannot be made, the department shall refund said amount, without interest, from the fund. For like cause and within the same period, adjustment or refund may be so made on the department's own initiative.

(2) If the department shall determine that an employer has paid taxes to this state under this chapter when such taxes should have been paid to another state under a similar act of such other state, transfer of such taxes to such other state shall be made upon discovery or, upon proof of payment that such other state has been fully paid, then refund to such employer shall be made at any time upon application without limitation of time.

(3) In the event that this chapter is not certified by the secretary of labor under section 1603 of the Internal Revenue Code, as amended, 1939, for any year, then and in that event refunds shall be made of all taxes required under this chapter from employers for that year.

History: En. Subd. (d), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 3, Ch. 233, L. 1943; amd. Sec. 6, Ch. 164, L. 1955; amd. Sec. 10, Ch. 171, L. 1957; amd. Sec. 26, Ch. 368, L. 1975; R.C.M. 1947, 87-138; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 11, Ch. 373, L. 1991.

Cross-References

"Contributions" defined, 39-51-201.
"Department" defined, 39-51-201.
"Fund" defined, 39-51-201.
"State" defined, 39-51-201.

39-51-1111 through 39-51-1120 reserved.

39-51-1121. Definitions. As used in this part and part 12, the following definitions apply:

(1) "Computation date" means the reporting period ending September 30 preceding the calendar year for which a covered employer's contribution rate is effective.

(2) "Cutoff date" means October 31 immediately following the computation date. The department may extend the cutoff date in meritorious cases.

(3) "Deficit employer" means an employer who is subject under this chapter and who has established a record of accumulated benefits charged to the employer's account in excess of the employer's accumulated contributions paid as of the cutoff date.

(4) "Eligible employer" means an employer who has been subject under this chapter for the 3 fiscal years immediately preceding the computation date and who has:

(a) established a record of accumulated contributions in excess of benefits charged to the employer's account; and

(b) paid wages in at least 1 of the 8 calendar quarters preceding the computation date.

(5) "Fiscal year" means the four consecutive calendar quarters ending on September 30.

(6) "Governmental entities" means the state or any political subdivision of the state or an instrumentality of the state or a political subdivision, including any employing unit funded directly by tax levies.

(7) "New employer" means an employer who:

(a) has not been subject to the provisions of this chapter for the 3 fiscal years immediately preceding the computation date; and

(b) has established a record of accumulated contributions in excess of benefits charged to the employer's account.

(8) "Taxable wage base" means the amount of wages subject to contributions and to assessments under 39-51-404(4) for each calendar year. Payment of contributions and of assessments under 39-51-404(4) may apply only to wages paid up to and including the amount specified in 39-51-1108.

History: En. Secs. 1, 2, Ch. 685, L. 1979; amd. Sec. 1, Ch. 3, L. 1981; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 7, Ch. 234, L. 1987; amd. Sec. 7, Ch. 618, L. 1989; amd. Sec. 20, Ch. 373, L. 1991.

Cross-References

"Benefits" defined, 39-51-201.

"Contributions" defined, 39-51-201.

"Employing unit" defined, 39-51-201.

"State" defined, 39-51-201.

39-51-1122. Treatment of minor irregularities in determination of eligible employer status. For the purpose of determining if a covered employer is an eligible employer, delinquencies of a minor nature may be disregarded if it is shown to the satisfaction of the department that the covered employer acted in good faith and that forfeiture of a reduced contribution rate because of such minor delinquency would be inequitable.

History: En. Sec. 3, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Cross-References

"Department" defined, 39-51-201, 39-51-1121.

39-51-1123. Rates of contributions. All covered employers, except governmental entities and those qualified and electing to make payments in lieu of contributions, shall pay contributions at rates assigned annually by the department.

History: En. Sec. 4, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Cross-References

"Contributions" defined, 39-51-201.

"Department" defined, 39-51-201, 39-51-1121.

39-51-1124. Procedure for election to make payments in lieu of contributions. (1) Any nonprofit organization defined in 39-51-1103 or governmental entity electing to become liable for payments in lieu of contributions must file a written notice of its election with the department not later than 30 days immediately following the date of the determination of subjectivity to this chapter. This election shall be for a period of not less than 2 years.

(2) Any nonprofit organization defined in 39-51-1103 or governmental entity which has been paying contributions for at least 2 taxable years may change to payments in lieu of contributions by filing a written notice to that effect with the department within 30 days before the beginning of the taxable year for which the change is effective.

History: En. Sec. 5, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Cross-References

"Contributions" defined, 39-51-201.

"Department" defined, 39-51-201, 39-51-1121.

39-51-1125. Computation of payments in lieu of contributions. (1) After June 30, 1987, qualified employers electing to make payments in lieu of contributions shall pay into the fund an amount equivalent to the full amount of regular benefits plus the state's share of extended benefits paid to individuals based on wages paid by the employing unit. After December 31, 1978, governmental entities shall pay the full amount of extended benefits.

(2) If benefits paid an individual are based on wages paid by both the employer and one or more other employers, the amount payable by any one employer to the fund bears the same ratio to total benefits paid to the individual as the base period wages paid to the individual by such employer bear to the total amount of base period wages paid to the individual by all the individual's base period employers.

(3) If the base period wages of an individual include wages from more than one such employer, the amount to be paid into the fund with respect to the benefits paid to the individual shall be prorated among the liable employers in proportion to the wages paid to the individual by each such employer during the base period.

(4) The amount of payment required from employers shall be ascertained by the department monthly and becomes due and payable by the employer quarterly as directed in this chapter. Penalty and interest for delinquency shall be assessed such employers as specified in 39-51-1301.

(5) A payment may not be required under this section with respect to benefits paid to an individual if the qualified employer continues to provide employment to the individual with no reduction in hours or wages.

History: En. Sec. 6, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 8, Ch. 234, L. 1987; amd. Sec. 21, Ch. 373, L. 1991.

Cross-References

"Base period" defined, 39-51-201.
"Benefits" defined, 39-51-201.
"Contributions" defined, 39-51-201.
"Department" defined, 39-51-201, 39-51-1121.
"Employing unit" defined, 39-51-201.
"Fund" defined, 39-51-201.
"Wages" defined, 39-51-201.

39-51-1126. Termination of election to make payments in lieu of contributions. (1) Any nonprofit organization or governmental entity may terminate its election to make payments in lieu of contributions after 2 years from the effective date of such election by filing a written notice with the department not later than 30 days prior to the beginning of the taxable year for which the termination is effective.

(2) If a nonprofit organization or governmental entity is delinquent in making payments in lieu of contributions, the department may terminate the election to make payments in lieu of contributions as of the beginning of the next taxable year, and the termination is effective for that and the next taxable year.

History: En. Sec. 7, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Cross-References

"Contributions" defined, 39-51-201.
"Department" defined, 39-51-201, 39-51-1121.

39-51-1127 through 39-51-1130 reserved.

39-51-1131. Terminated. Sec. 12, Ch. 371, L. 1985.

History: En. Sec. 1, Ch. 371, L. 1985.

Part 12

Employer Classification and Experience Rating

39-51-1201 through 39-51-1205. Repealed. Sec. 21, Ch. 685, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

39-51-1201 through 39-51-1205. En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109.

39-51-1206. Department to provide for notification of employers of their classification and contribution rate. The department shall by regulation provide for the proper notification of employers of the classification and rate of contribution applicable to their accounts. Such notification shall be final for all purposes unless and until such employer files a written request with the department for a redetermination or hearing thereon within 30 days after receipt of such notice.

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(part); amd. Sec. 1, Ch. 349, L. 1981.

Cross-References

"Department" defined, 39-51-201, 39-51-1121.

39-51-1207 through 39-51-1210 reserved.

39-51-1211. Definitions. The definitions set forth in 39-51-1121 apply to this part.

History: En. 39-51-1211 by Code Commissioner, 1979.

39-51-1212. Experience rating for governmental entities. (1) Governmental entities newly covered under this chapter after December 31, 1974, shall make payments for the period prior to July 1, 1977, equal to 0.4% of total wages paid employees for services in employment during the calendar quarter and for the period after July 1, 1977, shall make payments at the median rate.

(2) The rates of governmental entities who have accumulated experience rating credits shall be adjusted annually as follows with each governmental entity assigned a rate based upon:

(a) its benefit cost experience, to be arrived at by dividing the total sum of benefits charged to the employer's account for all past periods which are completed transactions by December 31 by total wages from date of subjectivity of the employing unit through December 31; and

(b) the benefit cost for all past years of governmental entities electing to pay contributions compared with total payrolls reported for all past years by these governmental entities used as a median, with the rates so fixed using the median that the rates will, when applied to the total annual payroll for subject governmental entities, yield total paid contributions equaling approximately the total benefit costs.

(3) New governmental entities electing to pay contributions shall be assigned the median rate for the year in which they become subject.

(4) At no time may the minimum rate be less than 0.1% or the maximum rate be greater than 1.5%. The rates are to be graduated at one-tenth intervals.

(5) In the event benefit charges exceed contributions paid in the last 2 completed fiscal years, governmental entities' rates will be adjusted by increasing all rates to the next higher schedule.

(6) The computed rate is effective July 1 of each year.

(7) Governmental entities must be charged for their share of the total benefits paid to a claimant if the governmental entity contributed wages during the claimant's base period. The benefit charged must be based on the percentage of wages paid by the governmental entity as compared to the total wages paid by all employers in the claimant's base period.

(8) A payment may not be required under this section with respect to benefits paid to an individual if the governmental employer continues to provide employment to the individual with no reduction in hours or wages.

History: En. Sec. 9, Ch. 685, L. 1979; amd. Sec. 1, Ch. 50, L. 1989; amd. Sec. 22, Ch. 373, L. 1991.

Cross-References

"Annual payroll" defined, 39-51-201.
"Benefits" defined, 39-51-201.
"Calendar quarter" defined, 39-51-201.
"Contributions" defined, 39-51-201.
"Employing unit" defined, 39-51-201.
"Wages" defined, 39-51-201.

39-51-1213. Classification of employers for experience rating purposes. (1) The department shall for each calendar year classify employers in accordance with their actual experience in the payment of contributions and with respect to benefits charged against their accounts, with contribution rates reflecting benefit experience. Each employer's rate for a calendar year shall be determined on the basis of the employer's record as of October 1 of the preceding calendar year.

(2) In making the classification, each eligible and deficit employer's contribution rate is determined in the manner set forth below:

(a) Each employer is given an "experience factor" which is contributions paid since October 1, 1981, minus benefits charged on each employer's account since October 1, 1981, divided by the employer's average annual taxable payroll rounded to the next lower dollar amount for the 3 fiscal years immediately preceding the computation date. The computation of the "experience factor" shall be to six decimal places.

(b) Schedules shall be prepared listing all eligible and deficit employers in inverse numerical order of their experience factors. There shall be listed on such schedules for each employer in addition to the experience factor:

(i) the amount of the employer's taxable payroll for the fiscal year ending on the computation date; and

(ii) the cumulative total consisting of the sum of the employer's taxable payroll for the fiscal year ending on the computation date and the corresponding taxable payrolls for all other employers preceding that employer on the schedules.

(3) The cumulative taxable payroll amounts listed on the schedules provided for in 39-51-1218 shall be segregated into groups that will yield

approximately the average tax rate according to the tax schedule assigned for that particular taxable year. Each group shall be identified by the rate class number listed in the table which represents the percentage limits of each group. Each employer on the schedules is assigned that contribution rate opposite that employer's rate class for the tax schedule in effect for the taxable year.

(4) (a) If the grouping of rate classes requires the inclusion of exactly one-half of an employer's taxable payroll, the employer is assigned the lower of the two rates designated for the two classes in which the halves of that employer's taxable payroll are so required.

(b) If the group of rate classes requires the inclusion of a portion other than exactly one-half of an employer's taxable payroll, the employer is assigned the rate designated for the class in which the greater part of that employer's taxable payroll is so required.

(c) If one or more employers on the schedules have experience factors identical to that of the last employer included in a particular rate class, all such employers are included in and assigned the contribution rate specified for such class, notwithstanding the provisions of 39-51-1214.

(5) If the taxable payroll amount or the experience factor or both such taxable payroll amount and experience factor of any eligible or deficit employer listed on the schedules is changed, the employer is placed in that position on the schedules which the employer would have occupied had that employer's taxable payroll amount or experience factor as changed been used in determining that employer's position in the first instance, but such change does not affect the position or rate classification of any other employer listed on the schedules and does not affect the rate determination for previous years.

(6) An employer who has not filed all required payroll reports or paid all taxes, penalties, and interest due by the cutoff date must be assigned the maximum contribution rate in effect for the taxable year for his classification as an eligible, deficit, or new employer.

History: En. Sec. 10, Ch. 685, L. 1979; amd. Sec. 2, Ch. 3, L. 1981; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 168, Ch. 575, L. 1981; amd. Sec. 3, Ch. 371, L. 1985; amd. Sec. 9, Ch. 234, L. 1987; amd. Sec. 23, Ch. 373, L. 1991.

Cross-References

"Annual payroll" defined, 39-51-201.

"Annual total payroll" defined, 39-51-201.

"Benefits" defined, 39-51-201.

"Contributions" defined, 39-51-201.

"Department" defined, 39-51-201, 39-51-1121.

39-51-1214. Benefit payments chargeable to employer experience rating accounts. (1) Except for cost reimbursement, benefits paid must be charged to the account of each of the claimant's base period employers. The benefit charged must be based on the percentage of wages paid by the employer as compared to the total wages paid by all employers in the claimant's base period.

(2) A charge may not be made to the account of a covered employer with respect to benefits paid under the following situations:

(a) if paid to a worker who terminated services voluntarily without good cause attributable to a covered employer or who had been discharged for misconduct in connection with services;

(b) if paid in accordance with the extended benefit program triggered by either national or state indicators;

(c) if the base period employer continues to provide employment with no reduction in hours or wages;

(d) if benefits are paid to claimants who are in training approved under 39-51-2307; or

(e) if the base period employer is ordered to state or federal active duty in the national guard or reserves.

History: **En. Sec. 11, Ch. 685, L. 1979; amd. Sec. 3, Ch. 3, L. 1981; amd. Sec. 2, Ch. 50, L. 1989; amd. Sec. 24, Ch. 373, L. 1991; amd. Sec. 1, Ch. 86, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 86 inserted (2)(e) providing for no charge to the account of an employer if the base period employer is ordered to certain active military duty; and made minor changes in style. Amendment effective March 5, 1993.

Effective Date — Retroactive Applicability: Section 2, Ch. 86, L. 1993, provided: "(1) [This act] is effective on passage and approval [approved March 5, 1993].

(2) [Section 1] [amending 39-51-1214] applies retroactively, within the meaning of 1-2-109, to benefit claims filed on or after August 2, 1990."

Cross-References

"Base period" defined, 39-51-201.
"Benefits" defined, 39-51-201.
"State" defined, 39-51-201.
"Wages" defined, 39-51-201.

39-51-1215. Maintenance of experience rating records. An experience rating record shall be maintained for each covered employer. The record is credited with all contributions which the covered employer has paid since October 1, 1981. The record is also charged with the amount of benefits paid which are chargeable to the covered employer's account since October 1, 1981. Nothing in this section grants any covered employer or individual in his service a priority with respect to any claim or right because of amounts paid by the covered employer into the employment security fund.

History: **En. Sec. 12, Ch. 685, L. 1979; amd. Sec. 4, Ch. 3, L. 1981; amd. Sec. 4, Ch. 371, L. 1985.**

Cross-References

"Benefits" defined, 39-51-201.
"Contributions" defined, 39-51-201.
"Fund" defined, 39-51-201.

39-51-1216. Experience rating record voided when account inactive. Whenever an employer whose coverage has been terminated because he has ceased to do business or because he has not covered employment for a period of 3 years becomes a covered employer, he is considered a new employer and he is not to be credited with his previous experience for the purpose of computing any future "experience factor".

History: **En. Sec. 13, Ch. 685, L. 1979.**

39-51-1217. Schedule of rates assigned based on trust fund reserve. (1) The rate schedule for each calendar year is assigned based upon the ratio of the trust fund balance as of October 31 prior to the rate year to total wages in covered employment for the 12-month period ending June 30 prior to the computation date.

(2) The ratio at the top of each tax schedule in the tax table shown in 39-51-1218 represents the minimum fund level required for a specific tax schedule to be in effect.

(3) Employer rates are assigned in accord with the rates provided in each schedule for eligible and deficit employers, based upon their experience as defined in this section.

(4) For the calendar year 1990 and each year thereafter, any employer classified as a new employer must be assigned a rate equal to the average rate of contributions paid by employers in the same major industrial classification for the calendar year preceding the computation date, plus an adjustment for the difference between the average tax rate assigned for the previous calendar year and the average rate in effect for the current calendar year. At no time may a new employer be assigned a rate lower than 1%. The computation of the average rate of contributions in a major industrial classification must exclude those employer accounts that are not eligible for the computation of an experience rating solely by reason of insufficient experience. The department shall develop the major industrial classifications for the state and shall annually determine the contribution rate for each classification.

History: En. Sec. 14, Ch. 685, L. 1979; amd. Sec. 5, Ch. 3, L. 1981; amd. Sec. 3, Ch. 50, L. 1989; amd. Sec. 25, Ch. 373, L. 1991.

Cross-References

"Fund" defined, 39-51-201.

"Wages" defined, 39-51-201.

39-51-1218. Rate schedules.

SCHEDULES OF CONTRIBUTION RATES — Part I

	Sched. I	Sched. II	Sched. III	Sched. IV
Minimum Ratio of Fund to Total Wages	(.0260)	(.0245)	(.0225)	(.0200)
Average Tax Rate	1.4	1.6	1.8	2.0
Rate Class	Contribution Rates For Eligible Employers			
1	0.0%	0.1%	0.3%	0.5%
2	0.1	0.3	0.5	0.7
3	0.3	0.5	0.7	0.9
4	0.5	0.7	0.9	1.1
5	0.7	0.9	1.1	1.3
6	0.9	1.1	1.3	1.5
7	1.1	1.3	1.5	1.7
8	1.3	1.5	1.7	1.9
9	1.5	1.7	1.9	2.1
10	1.7	1.9	2.1	2.3
Rate Class	Contribution Rates For Deficit Employers			
1	3.2%	3.4%	3.6%	3.8%
2	3.4	3.6	3.8	4.0
3	3.6	3.8	4.0	4.2
4	3.8	4.0	4.2	4.4
5	4.0	4.2	4.4	4.6
6	4.2	4.4	4.6	4.8
7	4.4	4.6	4.8	5.0
8	4.6	4.8	5.0	5.2

9	4.8	5.0	5.2	5.4
10	6.4	6.4	6.4	6.4

SCHEDULES OF CONTRIBUTION RATES — Part II

Sched. V	Sched. VI	Sched. VII	Sched. VIII	Sched. IX	Sched. X
(.0170)	(.0135)	(.0095)	(.0075)	(.0050)	(.....)
2.2	2.4	2.6	2.8	3.0	3.2
	Contribution Rates For Eligible Employers				
0.7%	0.9%	1.1%	1.3%	1.5%	1.7%
0.9	1.1	1.3	1.5	1.7	1.9
1.1	1.3	1.5	1.7	1.9	2.1
1.3	1.5	1.7	1.9	2.1	2.3
1.5	1.7	1.9	2.1	2.3	2.5
1.7	1.9	2.1	2.3	2.5	2.7
1.9	2.1	2.3	2.5	2.7	2.9
2.1	2.3	2.5	2.7	2.9	3.1
2.3	2.5	2.7	2.9	3.1	3.3
2.5	2.7	2.9	3.1	3.3	3.5
	Contribution Rates For Deficit Employers				
4.0%	4.2%	4.4%	4.6%	4.8%	5.0%
4.2	4.4	4.6	4.8	5.0	5.2
4.4	4.6	4.8	5.0	5.2	5.4
4.6	4.8	5.0	5.2	5.4	5.6
4.8	5.0	5.2	5.4	5.6	5.8
5.0	5.2	5.4	5.6	5.8	6.0
5.2	5.4	5.6	5.8	6.0	6.2
5.4	5.6	5.8	6.0	6.2	6.4
5.6	5.8	6.0	6.2	6.4	6.4
6.4	6.4	6.4	6.4	6.4	6.4

History: En. Sec. 15, Ch. 685, L. 1979; amd. Sec. 5, Ch. 371, L. 1985; amd. Sec. 26, Ch. 373, L. 1991.

Cross-References

"Fund" defined, 39-51-201.

"Wages" defined, 39-51-201.

39-51-1219. Procedures for the substitution, merger, or acquisition of an employer account by a successor employing unit. (1) Subject to the provisions of subsection (3), whenever any individual or organization (whether or not a covered employer) in any manner succeeds to or acquires all or substantially all of the business of an employer who at the time of acquisition was a covered employer and whenever in respect to whom the department finds that the business of the predecessor is continued solely by the successor:

(a) the separate account and the actual contribution, benefit, and taxable payroll experience of the predecessor must, upon the joint application of the predecessor and the successor within 90 days after the acquisition and approval by the department, be transferred to the successor employer for the purpose of determining the successor's liability and rate of contribution; and

(b) any successor who was not an employer on the date of acquisition becomes a covered employer as of that date.

(2) Whenever any individual or organization (whether or not a covered employer) in any manner succeeds to or acquires part of the business of an employer who at the time of acquisition was a covered employer and whenever that portion of the business is continued by the successor:

(a) so much of the separate account and the actual contribution, benefit, and taxable payroll experience of the predecessor as is attributable to the portion of the business transferred, as determined on a pro rata basis in the same ratio that the wages of covered employees properly allocable to the transferred portion of the business bear to the payroll of the predecessor in the last 4 completed calendar quarters immediately preceding the date of transfer, must, upon the joint application of the predecessor and the successor within 90 days after the acquisition and approval by the department, be transferred to the successor employer for the purpose of determining the successor's liability and rate of contribution; and

(b) any successor who was not an employer on the date of acquisition becomes a covered employer as of that date.

(3) (a) The 90-day period may be extended at the discretion of the department.

(b) Whenever a predecessor covered employer has a deficit experience rating account as of the last computation date, the transfer provided for in subsections (1) and (2) is mandatory except when it is shown by substantial evidence that the management, the ownership, or both the management and ownership are not substantially the same for the successor as for the predecessor, in which case the successor shall begin with the rate of a new employer. Whenever a mandatory transfer involves only a portion of the experience rating record and the predecessor or successor employers fail to supply the required payroll information within 10 days after notice, the transfer must be based on estimates of the applicable payrolls. The successor must be notified in writing of the mandatory transfer, and unless the mandatory transfer is appealed within 30 calendar days, the right to appeal is waived.

(c) Whenever a predecessor covered employer has an eligible experience rating account as of the last computation date and when it is shown by substantial evidence that the management, the ownership, or both the management and the ownership are substantially the same for the successor as for the predecessor, the transfer provided for in subsections (1) and (2) is automatic. Whenever an automatic transfer involves only a portion of the experience rating record and the predecessor or successor employers fail to supply the required payroll information within 10 days after notification, the transfer must be based on estimates of the applicable payrolls. The successor must be notified in writing of the automatic transfer and shall request within 30 days of notification that the experience rating account of the predecessor not be transferred.

(4) (a) If the successor was a covered employer prior to the date of the acquisition of all or a part of the predecessor's business, the successor's rate of contribution, effective the first day of the calendar year immediately

following the date of acquisition, is based on the combined experience of the predecessor and successor.

(b) If the successor was not a covered employer prior to the date of the acquisition of all or a part of the predecessor's business, the successor's rate is the rate applicable to the predecessor with respect to the period immediately preceding the date of acquisition, but if there was more than one predecessor, the successor's rate must be a newly computed rate based on the combined experience of the predecessors, becoming effective immediately after the date of acquisition and remaining in effect for the balance of the rate year.

History: En. Sec. 16, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 10, Ch. 234, L. 1987; amd. Sec. 55, Ch. 83, L. 1989; amd. Sec. 2, Ch. 171, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 171 in (3)(b) inserted third sentence regarding successor notification and waiver of appeal; inserted (3)(c) providing for automatic transfer; and made minor changes in style. Amendment effective March 25, 1993.

Cross-References

"Benefit" defined, 39-51-201.

"Department" defined, 39-51-201, 39-51-1121.

"Employing unit" defined, 39-51-201.

"Wages" defined, 39-51-201.

Part 13

Unpaid Contributions

39-51-1301. Penalty and interest on past-due taxes. (1) Taxes unpaid on the date on which they are due and payable, as provided by subsections (1) and (2) of 39-51-1103 and 39-51-1125, that are paid by the end of the month following the due date shall be subject to a penalty assessment of $10 or 10% of the taxes due, whichever is greater. If the taxes are not paid by the end of the month following the due date, the employer shall be subject to a penalty assessment of $15 or 15% of the taxes due, whichever is greater. All past-due taxes shall bear interest at the rate of 18% a year, to be prorated on a daily basis.

(2) A penalty of $40 shall be assessed whenever, as the result of a willful refusal of an employer to furnish wage information or pay taxes on time, the department issues a subpoena to obtain wage information or makes a summary or jeopardy assessment pursuant to 39-51-1302.

(3) There is an account in the federal special revenue fund. Penalties and interest collected under this section must be deposited in that account. Money deposited in that account and appropriated to the department may only be used by the department to administer this chapter, to fund apprenticeship instruction programs pursuant to 39-6-103, and to detect and collect unpaid taxes and overpayments of benefits to the extent that federal grant revenue is less than amounts appropriated for this purpose. Money in the account not appropriated for these purposes must be transferred by the department to the unemployment insurance trust fund at the end of each biennium.

(4) When failure to pay taxes on time was not caused by willful intent of the employer, the department may abate the penalty and interest.

(5) All money accruing to the unemployment insurance trust fund from interest and penalties collected on past-due taxes must be used solely for the payment of unemployment insurance benefits and may not be used for any other purpose.

History: En. Subd. (a), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 3, Ch. 233, L. 1943; amd. Sec. 5, Ch. 190, L. 1945; amd. Sec. 24, Ch. 368, L. 1975; amd. Sec. 1, Ch. 197, L. 1977; R.C.M. 1947, 87-135; amd. Sec. 1, Ch. 47, L. 1979; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 19, Ch. 685, L. 1979; amd. Sec. 1, Ch. 2, L. 1981; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 2, Ch. 369, L. 1983; amd. Sec. 1, Ch. 555, L. 1983; amd. Sec. 1, Ch. 13, Sp. L. June 1986; amd. Sec. 11, Ch. 234, L. 1987; amd. Sec. 12, Ch. 373, L. 1991; amd. Sec. 2, Ch. 639, L. 1991.

Cross-References
"Contributions" defined, 39-51-201.
"Department" defined, 39-51-201.
"Fund" defined, 39-51-201.

39-51-1302. Summary or jeopardy assessment of unpaid taxes. (1) If any employer fails to file a report or return as required under this chapter or the regulations of the department adopted thereunder within the time specified or if the employer's records are inaccurate or are incomplete when an employer has already filed a quarterly wage report for the period in question, the department may make a summary or jeopardy assessment of the amount due by making up such report and determining the amount of taxes due and owing to the fund upon the basis of such information as the department may be able to obtain, and thereupon the same shall be collected the same as other reports and taxes due, with penalty and interest as provided in this chapter.

(2) Upon making such summary or jeopardy assessment, the department shall immediately notify the employer in writing by personal service or by certified mail in the usual course at the last known principal place of business operated by the employer. Such assessment shall be final unless the employer shall protest such assessment in writing within 15 days after service of the notice or, within the same period of time, the employer shall file a correct, signed, and sworn report and statement as provided by the chapter and the regulations of the department.

(3) Upon written protest being filed as above set forth, a day certain for the hearing thereof shall be fixed by the department and notice thereof mailed to the employer. At such hearing, the facts ascertained by the department shall be conclusive and the department may upon the basis of such facts ascertained assess the amount due, modify, set aside, or revise the prior assessment and require the employer to pay the amount due with penalty and interest as provided for in this chapter. A copy of the decision of the department and the assessment of the amount due shall be mailed to the employer at his last known principal place of business and thereupon become final.

History: En. as Subd. (f) of Sec. 14, Ch. 137, L. 1937 by Sec. 3, Ch. 233, L. 1943; amd. Sec. 28, Ch. 368, L. 1975; R.C.M. 1947, 87-140; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 13, Ch. 373, L. 1991.

Cross-References
"Contributions" defined, 39-51-201.
"Department" defined, 39-51-201.
"Fund" defined, 39-51-201.

39-51-1303. Collection of unpaid taxes by civil action. (1) If, after due notice, any employer defaults in any payment of taxes, penalties, or interest thereon, the department may at its discretion initiate a civil action in the name of the Montana department of labor and industry to collect the amount due, and the employer adjudged in default shall pay the costs of such action.

(2) An action for the collection of taxes due must be brought within 5 years after the due date of such taxes or it is barred.

(3) The department may pursue its remedy under either this section or 39-51-1304, or both.

History: **En. Subd. (b), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 1, Ch. 36, L. 1969; amd. Sec. 1, Ch. 105, L. 1975; amd. Sec. 25, Ch. 368, L. 1975; amd. Sec. 1, Ch. 386, L. 1977; R.C.M. 1947, 87-136(1); amd. Sec. 46, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 111, L. 1983; amd. Sec. 1, Ch. 514, L. 1985; amd. Sec. 12, Ch. 234, L. 1987; amd. Sec. 14, Ch. 373, L. 1991.**

Cross-References

"Contributions" defined, 39-51-201.

"Department" defined, 39-51-201.

39-51-1304. Lien for payment of unpaid taxes — levy and execution. (1) Unpaid taxes, including penalties and interest assessed thereon, have the effect of a judgment against the employer, arising at the time such payments are due. The department may issue a certificate setting forth the amount of payments due and directing the clerk of the district court of any county of the state to enter the certificate as a judgment in the docket pursuant to 25-9-301. From the time the judgment is docketed, it becomes a lien upon all real and personal property of the employer. After the due process requirements of 39-51-1109 and 39-51-2403 have been satisfied, the department may enforce the judgment pursuant to Title 25, chapter 13, except that the department may enforce the judgment at any time within 10 years of the creation of the lien.

(2) The lien provided for in subsection (1) is not valid against any third party owning an interest in real or personal property against which the judgment is enforced if:

(a) the third party's interest is recorded prior to the entrance of the certificate as a judgment; and

(b) the third party receives from the most recent grantor of the interest a signed affidavit stating that all taxes, penalties, and interest due from the grantor have been paid.

(3) A grantor who signs and delivers an affidavit is subject to the penalties imposed by 39-51-3204 if any part of it is untrue. Notwithstanding the provisions of 39-51-3204, the department may proceed against the employer under this section or 39-51-1303, or both, to collect the delinquent taxes, penalties, and interest.

(4) The lien provided for in subsection (1) must be released upon payment in full of the unpaid taxes, penalties, and accumulated interest. The department may release or may partially release the lien upon partial payment or whenever the department determines that the release or partial release of the lien will facilitate the collection of unpaid taxes, penalties, or interest. The department may release the lien if it determines that the lien is unenforceable.

History: **En. as Subd. (e) of Sec. 14, Ch. 137, L. 1937 by Sec. 8, Ch. 164, L. 1941; amd. Sec. 8, Ch. 156, L. 1961; amd. Sec. 27, Ch. 368, L. 1975; R.C.M. 1947, 87-139; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 2, Ch. 514, L. 1985; amd. Sec. 13, Ch. 234, L. 1987; amd. Sec. 1, Ch. 487, L. 1987; amd. Sec. 15, Ch. 373, L. 1991.**

Cross-References

"Contributions" defined, 39-51-201.

"Department" defined, 39-51-201.

Liens generally, Title 71, ch. 3, part 1.

39-51-1305. Priority of payment of taxes due under legal dissolutions or distributions. In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this state, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, taxes then or thereafter due shall be paid in full prior to all other claims, except taxes and claims for wages of not more than $250 to each claimant earned within 6 months of the commencement of the proceeding.

History: En. Subd. (c), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; R.C.M. 1947, 87-137; amd. Sec. 11, Ch. 125, L. 1985; amd. Sec. 16, Ch. 373, L. 1991.

Cross-References

"Contributions" defined, 39-51-201.

"Wages" defined, 39-51-201.

39-51-1306. Reciprocity with other states for collection of unpaid taxes. (1) The courts of this state shall recognize and enforce liabilities for unemployment taxes and any other special assessments imposed by other states which extend a like comity to this state.

(2) The department is hereby empowered to sue in the courts of any other jurisdiction which extends such comity to collect unemployment taxes, penalties, and interest due this state. The officials of other states which by statute or otherwise extend a like comity to this state may sue in the courts of this state to collect for such taxes and any other special assessments and interest and penalties, if any, due such state. In any such case the administrator may through his attorney or attorneys institute and conduct such suit for such other state.

(3) Venue of such proceedings shall be the same as for actions to collect delinquent taxes, penalties, and interest due under this chapter.

(4) A certificate by the secretary of any such state under the great seal of such state attesting the authority of such official or officials to collect unemployment insurance taxes and any other special assessments, penalties, and interest shall be conclusive evidence of such authority.

History: En. Subd. (b), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 1, Ch. 36, L. 1969; amd. Sec. 1, Ch. 105, L. 1975; amd. Sec. 25, Ch. 368, L. 1975; amd. Sec. 1, Ch. 386, L. 1977; R.C.M. 1947, 87-136(2); amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 17, Ch. 373, L. 1991.

Cross-References

"Contributions" defined, 39-51-201.

"Department" defined, 39-51-201.

"State" defined, 39-51-201.

Parts 14 through 20 reserved

Part 21

Benefit Eligibility

39-51-2101. Total unemployment — when. An individual shall be deemed totally unemployed in any week during which the individual performed no work and earned no wages or a week of less than full-time work with wages of less than two times the individual's weekly benefit amount.

History: En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945;

amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969; amd. Sec. 33, Ch. 368, L. 1975; amd. Sec. 1, Ch. 115, L. 1977; R.C.M. 1947, 87-149(a)(1); amd. Sec. 14, Ch. 234, L. 1987.

Cross-References
"Week" defined, 39-51-201.

39-51-2102. Week of unemployment — when deemed to commence. An individual's week of unemployment shall be deemed to commence only after his registration at an unemployment office, except as the department may by regulation otherwise prescribe.

History: En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969; amd. Sec. 33, Ch. 368, L. 1975; amd. Sec. 1, Ch. 115, L. 1977; R.C.M. 1947, 87-149(a)(2); amd. Sec. 1, Ch. 349, L. 1981.

Cross-References
"Week" defined, 39-51-201.
"Department" defined, 39-51-201.

39-51-2103. Payment of benefits. (1) Benefits are payable from the fund to any individual who is or becomes unemployed and eligible for benefits as is herein prescribed.

(2) All benefits shall be paid through public employment offices in the state or other agencies designated by the department in accordance with such rules as the department may prescribe.

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(part); amd. Sec. 1, Ch. 349, L. 1981.

Cross-References
"Fund" defined, 39-51-201.
"Benefits" defined, 39-51-201.
"Department" defined, 39-51-201.

39-51-2104. General benefit eligibility conditions. An unemployed individual is eligible to receive benefits for any week of total unemployment within the individual's benefit year only if the department finds that the individual:

(1) has filed a claim at and has continued to report at an employment office in accordance with rules as the department may prescribe, except that the department may by rule prescribe that in cases in which it finds the requirements oppressive or inconsistent with the purposes of this chapter, an unemployed individual may file a claim and report for work by mail or through other governmental agencies;

(2) is able to work, is available for work, and is seeking work. A claimant is not considered ineligible in any week of unemployment for failure to comply with the provisions of this subsection if the failure is due to:

(a) an illness or disability that occurs after the claimant has registered for work and suitable work has not been offered to the claimant after the beginning of the illness or disability; or

(b) enrollment as a student as provided in 39-51-2307.

(3) prior to the first week for which the individual is paid benefits, has been totally unemployed for a waiting period of 1 week. A week is not counted as a week of total unemployment for the purposes of this subsection:

(a) if benefits have been paid for that week;

(b) unless the individual was eligible for benefits during the week;

(c) unless it occurs within the benefit year of the claimant;

(d) unless it occurs after benefits first could become payable to any individual under this chapter.

History: En. Sec. 4, Ch. 137, L. 1937; amd. Sec. 2, Ch. 137, L. 1939; amd. Sec. 2, Ch. 164, L. 1941; amd. Sec. 1, Ch. 233, L. 1943; amd. Sec. 1, Ch. 190, L. 1945; amd. Sec. 3, Ch. 191, L. 1953; amd. Sec. 2, Ch. 238, L. 1955; amd. Sec. 2, Ch. 140, L. 1957; amd. Sec. 3, Ch. 156, L. 1961; amd. Sec. 1, Ch. 390, L. 1971; amd. Sec. 1, Ch. 323, L. 1975; amd. Sec. 2, Ch. 368, L. 1975; amd. Sec. 1, Ch. 428, L. 1977; R.C.M. 1947, 87-105(a) thru (d); amd. Sec. 47, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 12, Ch. 125, L. 1985; amd. Sec. 6, Ch. 371, L. 1985; amd. Sec. 1, Ch. 404, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 404 inserted (2)(b) providing that a person is not ineligible during any week that the person is enrolled as a student as provided in 39-51-2307; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

"Benefits" defined, 39-51-201.

"Department" defined, 39-51-201.

"Employment office" defined, 39-51-201.

"Week" defined, 39-51-201.

39-51-2105. Qualifying wages. To qualify for benefits, an individual must have been paid total wages for employment in the base period in an amount:

(1) not less than 1 ½ times the wages earned in the calendar quarter in which wages were the highest during the base period; however, the total wages in the base period must be equal to or greater than 7% of the average annual wage described in 39-51-2201; or

(2) equal to or greater than 50% of the average annual wage described in 39-51-2201.

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(part); amd. Sec. 1, Ch. 688, L. 1979; amd. Sec. 1, Ch. 153, L. 1987; amd. Sec. 15, Ch. 234, L. 1987; amd. Sec. 1, Ch. 485, L. 1991.

Cross-References

"Base period" defined, 39-51-201.

"Benefits" defined, 39-51-201.

"Institution of higher education" defined, 39-51-201.

"State" defined, 39-51-201.

"Wages" defined, 39-51-201.

"Week" defined, 39-51-201.

39-51-2106. Certain wages not to be used in determining benefit eligibility or amount. Wages earned for services performed as an employee representative as defined in the Railroad Unemployment Insurance Act (52 Stat. 1094) or for services performed for an employer as defined in said act shall not be included for the purposes of determining eligibility or weekly benefit amount under this chapter.

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(part).

Cross-References
"Wages" defined, 39-51-201.

39-51-2107. Services for remuneration to be performed during benefit year as condition for receiving benefits in second benefit year — amount required. An individual who received benefits during a benefit year must perform services for remuneration following the initial separation from employment in the previous benefit year as a condition for receiving benefits in a second benefit year. The service must constitute employment as defined in 39-51-203 and 39-51-204. However, the individual must have earned the lesser of three-thirteenths of his high quarter of his second benefit year or 6 times his weekly benefit amount of that same year.

History: En. Sec. 4, Ch. 137, L. 1937; amd. Sec. 2, Ch. 137, L. 1939; amd. Sec. 2, Ch. 164, L. 1941; amd. Sec. 1, Ch. 233, L. 1943; amd. Sec. 1, Ch. 190, L. 1945; amd. Sec. 3, Ch. 191, L. 1953; amd. Sec. 2, Ch. 238, L. 1955; amd. Sec. 2, Ch. 140, L. 1957; amd. Sec. 3, Ch. 156, L. 1961; amd. Sec. 1, Ch. 390, L. 1971; amd. Sec. 1, Ch. 323, L. 1975; amd. Sec. 2, Ch. 368, L. 1975; amd. Sec. 1, Ch. 428, L. 1977; R.C.M. 1947, 87-105(e); amd. Sec. 29, Ch. 373, L. 1991.

Cross-References
"Benefits" defined, 39-51-201.

39-51-2108. Payment of benefits based on service in public, charitable, or educational organizations. (1) Benefits based on service in employment defined in subsections (5) and (6) of 39-51-203 and subsections (2) and (3) of 39-51-204 are payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to this chapter, except that benefits based on service in an instructional, research, or principal administrative capacity for an educational institution may not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract if the individual has a contract or reasonable assurance of a contract to perform services in any such capacity for any such educational institution for both such academic years or both such terms.

(2) Benefits based on services in any other capacity for an educational institution shall be denied to any individual for any week which commences during a period between 2 successive academic years or terms if the individual performs such services in the first of such academic years or terms and there is a reasonable assurance that the individual will perform such services in the second of such academic years or terms. If any individual is denied benefits and was not offered an opportunity to perform such service for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of the benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of the denial provided for in this section.

(3) Benefits based on services described in subsections (1) and (2) of this section shall be denied to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess and there is reasonable assurance that such

individual will perform such service in the period immediately following such vacation period or holiday recess.

(4) Benefits based on services described in subsections (1) and (2) of this section to an individual who performed such services for an educational institution while in the employ of an educational service agency shall be denied as specified in subsections (1), (2), and (3) of this section. The term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such service to one or more educational institutions.

History: En. Sec. 4, Ch. 137, L. 1937; amd. Sec. 2, Ch. 137, L. 1939; amd. Sec. 2, Ch. 164, L. 1941; amd. Sec. 1, Ch. 233, L. 1943; amd. Sec. 1, Ch. 190, L. 1945; amd. Sec. 3, Ch. 191, L. 1953; amd. Sec. 2, Ch. 238, L. 1955; amd. Sec. 2, Ch. 140, L. 1957; amd. Sec. 3, Ch. 156, L. 1961; amd. Sec. 1, Ch. 390, L. 1971; amd. Sec. 1, Ch. 323, L. 1975; amd. Sec. 2, Ch. 368, L. 1975; amd. Sec. 1, Ch. 428, L. 1977; R.C.M. 1947, 87-105(f); amd. Sec. 48, Ch. 397, L. 1979; amd. Sec. 1, Ch. 1, L. 1985.

Cross-References

"Benefits" defined, 39-51-201.

"Week" defined, 39-51-201.

39-51-2109. Payment of benefits to athletes. Effective January 1, 1978, benefits shall not be paid to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between 2 successive sport seasons or similar periods if such individual performed such services in the first of such seasons or similar periods and there is a reasonable assurance that such individual will perform such services in the later of such seasons or similar periods.

History: En. Sec. 4, Ch. 137, L. 1937; amd. Sec. 2, Ch. 137, L. 1939; amd. Sec. 2, Ch. 164, L. 1941; amd. Sec. 1, Ch. 233, L. 1943; amd. Sec. 1, Ch. 190, L. 1945; amd. Sec. 3, Ch. 191, L. 1953; amd. Sec. 2, Ch. 238, L. 1955; amd. Sec. 2, Ch. 140, L. 1957; amd. Sec. 3, Ch. 156, L. 1961; amd. Sec. 1, Ch. 390, L. 1971; amd. Sec. 1, Ch. 323, L. 1975; amd. Sec. 2, Ch. 368, L. 1975; amd. Sec. 1, Ch. 428, L. 1977; R.C.M. 1947, 87-105(g).

Cross-References

"Benefits" defined, 39-51-201.

"Week" defined, 39-51-201.

39-51-2110. Payment of benefits to aliens. (1) Benefits may not be paid on the basis of services performed by an alien unless the alien is an individual who was lawfully admitted for permanent residence at the time the services were performed, was lawfully present for the purposes of performing the services, or was permanently residing in the United States under color of law at the time the services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of section 212(d)(5) of the Immigration and Nationality Act.

(2) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to the individuals because of the individuals' alien status must be uniformly required from all applicants for benefits.

(3) In the case of an individual whose application for benefits would otherwise be approved, a determination that benefits to the individual are not payable because of the individual's alien status may not be made except upon a preponderance of the evidence.

History: En. Sec. 4, Ch. 137, L. 1937; amd. Sec. 2, Ch. 137, L. 1939; amd. Sec. 2, Ch. 164, L. 1941; amd. Sec. 1, Ch. 233, L. 1943; amd. Sec. 1, Ch. 190, L. 1945; amd. Sec. 3, Ch. 191, L. 1953; amd. Sec. 2, Ch. 238, L. 1955; amd. Sec. 2, Ch. 140, L. 1957; amd. Sec. 3, Ch.

156, L. 1961; amd. Sec. 1, Ch. 390, L. 1971; amd. Sec. 1, Ch. 323, L. 1975; amd. Sec. 2, Ch. 368, L. 1975; amd. Sec. 1, Ch. 428, L. 1977; R.C.M. 1947, 87-105(h); amd. Sec. 18, Ch. 373, L. 1991; amd. Sec. 3, Ch. 171, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 171 near end of (1) deleted reference to section 203(a)(7) of the Immigration and Nationality Act; and made minor changes in style. Amendment effective March 25, 1993.

Cross-References

"Benefits" defined, 39-51-201.

Part 22

Amount and Duration of Benefits

39-51-2201. Weekly benefit amount — determination of average weekly wage. (1) For claims filed before July 7, 1985, an eligible individual's weekly benefit amount shall be the total base period wages divided by the number of weeks of covered employment times 50%. The weekly benefit amount, if not a multiple of $1, must be rounded to the nearest lower full dollar amount. However, such amount shall not be less than the minimum or more than the maximum weekly benefit amount. For claims effective July 7, 1985, and filed before July 7, 1991, an individual's weekly benefit amount shall be the total base period wages divided by the number of weeks of covered employment times 49%. The weekly benefit amount, if not a multiple of $1, must be rounded to the nearest lower full dollar amount. However, such amount shall not be less than the minimum or more than the maximum weekly benefit amount.

(2) For claims filed on or after July 7, 1991, an individual's weekly benefit amount must be an amount equal to 1% of the total base period wages or equal to 1.9% of the total wages paid in the 2 calendar quarters in which wages were the highest during the base period. The weekly benefit amount, if not a multiple of $1, must be rounded to the nearest lower full dollar amount. However, the amount may not be less than the minimum or more than the maximum weekly benefit amount.

(3) On or before May 31 of each year, the total wages paid by all employers as reported on contribution reports submitted on or before such date for the preceding calendar year shall be divided by the average monthly number of individuals employed during the same preceding calendar year as reported on such contribution reports. The amount thus obtained is the average annual wage. The average annual wage divided by 52, rounded to the nearest cent, is the average weekly wage. Sixty percent of the average weekly wage shall constitute the maximum weekly benefit amount and shall apply to all maximum weekly benefit amount claims for benefits filed to establish a benefit year commencing on or after July 1 of the same year, except that the maximum weekly benefit amount for benefit years commencing on or after July 1, 1984, through January 3, 1987, is the amount calculated under this subsection after January 1, 1984, and on or before May 31, 1984. Such maximum weekly benefit amount, if not a multiple of $1, shall be computed to the nearest lower full dollar amount.

(4) The minimum weekly benefit amount shall be 15% of the average weekly wage. The minimum weekly benefit amount, if not a multiple of $1, shall be computed to the nearest lower full dollar amount.

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(b); amd. Sec. 2, Ch. 688, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 193, L. 1983; amd. Sec. 7, Ch. 371, L. 1985; amd. Sec. 2, Ch. 485, L. 1991.

Cross-References

"Base period" defined, 39-51-201.
"Benefit year" defined, 39-51-201.
"Benefits" defined, 39-51-201.
"Calendar quarter" defined, 39-51-201.
"Department" defined, 39-51-201.
"Wages" defined, 39-51-201.

39-51-2202. Partial payment of benefits. Partial payment for a week of unemployment as used in this section shall be the claimant's weekly benefit amount less 50% of wages earned in excess of one-fourth of his weekly benefit amount. Such wages and the one-fourth weekly benefit amount, if not a multiple of $1, shall be rounded to the nearest lower full dollar amount.

History: En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969; amd. Sec. 33, Ch. 368, L. 1975; amd. Sec. 1, Ch. 115, L. 1977; R.C.M. 1947, 87-149(a)(3)(A); amd. Sec. 2, Ch. 193, L. 1983.

Cross-References

"Wages" defined, 39-51-201.
"Week" defined, 39-51-201.
"Weekly benefit amount" defined, 39-51-201.

39-51-2203. Reduction of benefits because of amounts received from certain other sources. (1) An individual's weekly benefit amount must be reduced (but not below zero) by the amount that the individual is receiving in the form of a governmental or other pension, retirement pay, annuity, or other similar periodic payment that is based on the previous work of the individual and that is reasonably attributable to the week if:

(a) the payment is made under a plan maintained or contributed to by a base-period or chargeable employer; and

(b) except in the case of payments made under the Social Security Act or the Railroad Retirement Act, the services performed for the employer by the individual after the beginning of the base period or the remuneration for services affect eligibility for or the amount of the pension, retirement pay, annuity, or other similar payment.

(2) The reduction required by subsection (1) does not apply in those instances in which the governmental or other pension, retirement pay, annuity, or other similar periodic payment is made from a fund to which the individual was required to make a direct contribution. A pension plan negotiated under a collective bargaining agreement is considered a direct employee contribution under this section.

History: En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969; amd. Sec. 33, Ch. 368, L. 1975; amd. Sec. 1, Ch. 115, L. 1977; R.C.M. 1947, 87-149(a)(3)(B); amd. Sec. 1, Ch. 41, L. 1981; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 145, L. 1983; amd. Sec. 8, Ch. 618, L. 1989; amd. Sec. 4, Ch. 171, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 171 near beginning of (1), after "reduced", inserted "(but not below zero)" and near middle, after "based on", substituted "the previous work of the individual and that is reasonably attributable to the week" for "for and entirely contributed to by a base-period employer"; substituted (1)(a) concerning plan, (1)(b) excepting certain payments, and (2) concerning direct employee contributions for former (2) through (4) that read: "(2) However, if the service performed for the base-period employer does not affect either the eligibility for or the amount of the pension or other type of retirement benefit received from the plan maintained or contributed to by the base-period employer, the reduction requirement of subsection (1) does not apply.

(3) The exception in subsection (2) is not applicable to the receipt of social security and/or railroad retirement benefits.

(4) For the purposes of subsection (1), the department shall, by rule, adopt minimum federal offset requirements as imposed by the federal Employee Retirement Income Security Act of 1974, P.L. 94-566, as amended in 1980 by P.L. 96-364, and as may be amended after March 11, 1981"; and made minor changes in style. Amendment effective March 25, 1993.

Cross-References

"Benefit" defined, 39-51-201.
"Department" defined, 39-51-201.
"Weekly benefit amount" defined, 39-51-201.

39-51-2204. Maximum benefit amount. Any otherwise eligible individual is entitled during the individual's benefit year to a total amount of benefits equal to the individual's weekly benefit amount, as calculated according to 39-51-2201, times the number of full weeks of benefit entitlement appearing in the following table in the line which includes the individual's ratio of total base period earnings to the highest quarter of earnings in the base period:

Ratio of Total Base Period Earnings to High Quarter At Least	 But Less Than	Full Weeks of Benefits
1.00	1.25	8
1.25	1.50	10
1.50	1.75	12
1.75	2.00	14
2.00	2.25	16
2.25	2.50	18
2.50	2.75	20
2.75	3.00	22
3.00	3.25	24
3.25	—	26

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(d); amd. Sec. 3, Ch. 688, L. 1979; amd. Sec. 2, Ch. 153, L. 1987; amd. Sec. 3, Ch. 485, L. 1991.

Cross-References

"Base period" defined, 39-51-201.
"Benefit year" defined, 39-51-201.
"Benefits" defined, 39-51-201.

39-51-2205. Continuation of benefits at death of claimant. All accrued benefits due and payable at the time of death to any deceased claimant shall be paid to the surviving spouse or, if there be no surviving spouse, then to the surviving children or, if there be no surviving children, then to the next of kin without the necessity of any recipient obtaining letters testamentary or of administration.

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(g).

Cross-References

"Benefits" defined, 39-51-201.

39-51-2206. Repealed. Sec. 28, Ch. 234, L. 1987.

History: En. Sec. 15, Ch. 125, L. 1985.

Part 23
Benefit Disqualification

39-51-2301. Disqualification not to be confined to a single benefit year. A disqualification pursuant to the provisions of this part may not be confined to a single benefit year.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(h).

Cross-References

"Benefit year" defined, 39-51-201.

39-51-2302. Disqualification for leaving work without good cause. (1) An individual shall be disqualified for benefits if he has left work without good cause attributable to his employment.

(2) He may not be disqualified if the department finds that he left his employment because of personal illness or injury not associated with misconduct upon the advice of a licensed and practicing physician and, after recovering from his illness or injury when recovery is certified by a licensed and practicing physician, he returned to his employer and offered his service and his regular or comparable suitable work was not available, if so found by the department, provided he is otherwise eligible.

(3) To requalify for benefits, an individual must perform services other than self-employment for which remuneration is received equal to or in excess of six times his weekly benefit amount subsequent to the week in which the act causing the disqualification occurred unless he has been in regular attendance at an educational institution accredited by the state of Montana for at least 3 consecutive months from the date of his enrollment.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (a); amd. Sec. 4, Ch. 688, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 8, Ch. 371, L. 1985; amd. Sec. 30, Ch. 373, L. 1991.

Cross-References

"Benefits" defined, 39-51-201.

"Department" defined, 39-51-201.

"Weekly benefit amount" defined, 39-51-201.

39-51-2303. Disqualification for discharge due to misconduct. An individual shall be disqualified for benefits after being discharged:

(1) for misconduct connected with the individual's work or affecting the individual's employment until the individual has performed services, other than self-employment, for which remuneration is received equal to or in excess of eight times the individual's weekly benefit amount subsequent to the week in which the act causing the disqualification occurred;

(2) for gross misconduct connected with the individual's work or committed on the employer's premises, as determined by the department, for a period of 52 weeks.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (b); amd. Sec. 5, Ch. 688, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 16, Ch. 234, L. 1987.

Cross-References

"Benefits" defined, 39-51-201.

"Department" defined, 39-51-201.

"Gross misconduct" defined, 39-51-201.

"Weekly benefit amount" defined, 39-51-201.

39-51-2304. Disqualification for failure to apply for or to accept suitable work. (1) An individual is disqualified for benefits if the individual fails without good cause either to apply for available and suitable work when so directed by the employment office or the department or to accept an offer of suitable work which the individual is physically able and mentally qualified to perform or to return to customary self-employment, if any, when so directed by the department. Such disqualification continues for the week in which such failure occurs and until the individual has performed services, other than self-employment, for which remuneration is received equal to or in excess of six times that individual's weekly benefit amount subsequent to the date the act causing the disqualification occurred, with a reduction in the individual's maximum benefit amount equal to six times the weekly benefit amount, as determined by the department, provided the individual has not left this work under disqualifying circumstances.

(2) In determining whether or not any work is suitable for an individual, the department shall consider:

(a) the degree of risk involved to the individual's health, safety, and morals;

(b) the individual's physical fitness and prior training;

(c) the individual's experience and previous earnings;

(d) the individual's length of unemployment and prospects for securing local work in the customary occupation; and

(e) the distance of the available work from the individual's residence.

(3) Notwithstanding any other provisions of this chapter, including subsection (4), no work may be considered suitable and benefits may not be denied

under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(a) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(b) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(c) if, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(4) Subject to subsection (3), after 13 weeks of unemployment, suitable work is work that meets the criteria in this section and that offers 75% of the individual's earnings in previous insured work in the individual's customary occupation. No individual, however, is required to accept a job paying less than the federal minimum wage.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (c); amd. Sec. 49, Ch. 397, L. 1979; amd. Sec. 6, Ch. 688, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 409, L. 1985; amd. Sec. 3, Ch. 153, L. 1987; amd. Sec. 17, Ch. 234, L. 1987.

Cross-References

"Benefits" defined, 39-51-201.
"Department" defined, 39-51-201.
"Employment office" defined, 39-51-201.
"Wages" defined, 39-51-201.
"Weekly benefit amount" defined, 39-51-201.

39-51-2305. Disqualification when unemployment due to strike. (1) An individual shall be disqualified for benefits for any week with respect to which the department finds that his total unemployment is due to a strike which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the department that:

(a) he is not participating in or financing or directly interested in the labor dispute which caused the strike; and

(b) he does not belong to a grade or class of workers of which, immediately before the commencement of the strike, there were members employed at the premises at which the strike occurs, any of whom are participating in or financing or directly interested in the dispute.

(2) If in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this section, be deemed to be a separate factory, establishment, or other premises.

(3) If the department, upon investigation, shall find that such labor dispute is caused by the failure or refusal of any employer to conform to the provisions of any law of the state wherein the labor dispute occurs or of the United States pertaining to collective bargaining, hours, wages, or other conditions of work, such labor dispute shall not render the workers ineligible for benefits.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (d); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 400, L. 1985.

Cross-References

"Benefits" defined, 39-51-201.
"Department" defined, 39-51-201.
"State" defined, 39-51-201.
"Wages" defined, 39-51-201.

39-51-2306. Disqualification because of receipt of certain other wages, compensation, or benefits. (1) Effective April 1, 1977, an individual shall be disqualified for benefits for any week with respect to which he is receiving or has received payment in the form of:

(a) compensation for disability under the workers' compensation law or the occupational disease law of this or any other state or under a similar law of the United States or under the social security disability law. However, when an injured claimant has ceased to draw compensation benefits and shall have returned to the labor market, he shall then be entitled to receive unemployment compensation benefits under this chapter if he shall be otherwise qualified. Compensation which is received as a payment for a permanent partial disability shall not be computed to be spread over a period of weeks in advance so as to bar the recipient from receiving unemployment compensation benefits under this chapter, provided the recipient has returned to the labor market and is otherwise qualified.

(b) benefits under the Railroad Unemployment Insurance Act or any state unemployment compensation act or similar laws of any state or of the United States. This disqualification does not apply to any week with respect to which an individual is receiving or has received benefits under an unemployment compensation law of another state or of the United States if such benefits are paid pursuant to 39-51-504.

(2) Receipt of any wages, compensation, or benefits as set forth in subsection (1) of this section after payment of unemployment benefits and with respect to the same week for which unemployment benefits were received will thereupon require such individual to repay such unemployment benefits, and the department may collect such unemployment benefits in the same manner as provided for collection of benefits under 39-51-3206.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (e); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 9, Ch. 618, L. 1989.

Cross-References

"Benefits" defined, 39-51-201.
"Department" defined, 39-51-201.
"State" defined, 39-51-201.
"Wages" defined, 39-51-201.
"Week" defined, 39-51-201.

39-51-2307. Disqualification because of student status. (1) Except as provided in subsection (2) or (3), an individual is disqualified for benefits during the school year (within the autumn, winter, and spring seasons of the year) or the vacation periods within the school year or during any prescribed school term if the individual is a student regularly attending an established educational institution.

(2) An individual attending an adult basic education class 20 hours a week or less while laid off from a job is not disqualified from receiving benefits if the individual is willing to return to work when notified.

(3) An otherwise eligible individual may not be denied benefits for any week because the individual is in training approved by the department, nor may the individual be denied benefits with respect to any week in which the individual is in training approved by the department by reason of the application of provisions in 39-51-2304 or the application of provisions in 39-51-2104(2).

History: **En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (f); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 13, Ch. 125, L. 1985; amd. Sec. 2, Ch. 404, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 404 at beginning of (1) substituted exception clause for "Effective April 1, 1977"; inserted (2) providing that a person attending an adult basic education class 20 or fewer hours a week while laid off is not disqualified from benefits if willing to return to work when notified; at beginning of (3) deleted "Notwithstanding any other provisions in this section"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

"Benefits" defined, 39-51-201.
"Department" defined, 39-51-201.
"Week" defined, 39-51-201.

39-51-2308. Repealed. Sec. 31, Ch. 373, L. 1991.

History: **En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (g).**

Part 24
Claims for Benefits

39-51-2401. Claims to be made in accordance with regulations — employers to post and make available copies of such regulations. Claims for benefits shall be made in accordance with such regulations as the department may prescribe. Each employer shall post and maintain printed statements of such regulations in places readily accessible to individuals in his service and shall make available to each such individual at the time he becomes unemployed a printed statement of such regulations. Such printed statements shall be supplied by the department to each employer without cost to him.

History: **En. Sec. 6 (a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973; amd. Sec. 3, Ch. 368, L. 1975; amd. Sec. 1, Ch. 20, L. 1977; R.C.M. 1947, 87-107(a); amd. Sec. 1, Ch. 349, L. 1981.**

Cross-References

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

"Benefits" defined, 39-51-201.

"Department" defined, 39-51-201.

39-51-2402. Initial determination — redetermination. (1) A representative designated by the department and hereinafter referred to as a deputy shall promptly examine the claim and, on the basis of the facts found by the deputy, shall either determine whether or not such claim is valid and, if valid, the week with respect to which benefits shall commence, the weekly benefit amount payable, and the maximum benefit amount or shall refer such claim or any question involved therein to an appeals referee who shall make the decision with respect thereto in accordance with the procedure prescribed in 39-51-2403. The deputy shall promptly notify the claimant and any other interested party of the decision and the reasons therefor.

(2) The deputy may for good cause reconsider the decision and shall promptly notify the claimant and such other interested parties of the amended decision and the reasons therefor.

(3) No determination or redetermination of an initial or additional claim may be made under this section unless 5 days' notice of the time and place of the claimant's interview for examination of the claim is mailed to each interested party.

(4) A determination or redetermination shall be deemed final unless an interested party entitled to notice thereof applies for reconsideration of the determination or appeals therefrom within 10 days after such notification was mailed to the interested party's last-known address, provided that such period may be extended for good cause.

(5) Except as provided in subsection (6), no redetermination of a claim for benefits may be made after 2 years from the date of the initial determination.

(6) A redetermination may be made within 3 years from the date of the initial determination of a claim if the initial determination was based on a false claim, misrepresentation, or failure to disclose a material fact by the claimant or the employer."

History: En. Sec. 6 (a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973; amd. Sec. 3, Ch. 368, L. 1975; amd. Sec. 1, Ch. 20, L. 1977; R.C.M. 1947, 87-107(b), (c); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 4, Ch. 153, L. 1987; amd. Sec. 18, Ch. 234, L. 1987; amd. Sec. 10, Ch. 618, L. 1989.

Cross-References

"Benefits" defined, 39-51-201.

"Department" defined, 39-51-201.

"Week" defined, 39-51-201.

"Weekly benefit amount" defined, 39-51-201.

39-51-2403. Decision of appeals referee. After a hearing, an appeals referee shall make findings and conclusions promptly and on the basis thereof affirm, modify, or reverse the deputy's determination or redetermination. Each interested party shall be furnished promptly a copy of the decision and the supporting findings and conclusions. This decision shall be final unless further review is initiated pursuant to 39-51-2404 within 10 days after such notification was mailed to the interested party's last-known address, provided that such period may be extended for good cause.

History: En. Sec. 6 (a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973; amd. Sec. 3, Ch. 368, L. 1975; amd. Sec. 1, Ch. 20, L. 1977; R.C.M. 1947, 87-107(e); amd. Sec. 19, Ch. 234, L. 1987.

39-51-2404. Appeal to board. Any interested party dissatisfied with a decision of an appeals referee is entitled to appeal to the board. The department will promptly transmit all records pertinent to the appeal to the board. When a decision is rendered by the board with copies of such decision to all interested parties, including the department, that decision shall become final unless an interested party requests a rehearing or initiates judicial review by filing a petition in district court within 30 days of the date of mailing of the board's decision to his last-known address.

History: En. Sec. 6 (a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973; amd. Sec. 3, Ch. 368, L. 1975; amd. Sec. 1, Ch. 20, L. 1977; R.C.M. 1947, 87-107(g); amd. Sec. 1, Ch. 349, L. 1981.

Cross-References

"Board" defined, 39-51-201.

"Department" defined, 39-51-201.

39-51-2405. Prompt payment of claims. (1) Notwithstanding any provision in 39-51-2402 or 39-51-2404, benefits shall be paid promptly in accordance with a determination or redetermination under 39-51-2402 or the decision of an appeals referee, the board, or a reviewing court under 39-51-2404 upon the issuance of such determination, redetermination, or decision regardless of the pendency of the period to apply for reconsideration, file an appeal, or petition for judicial review that is provided with respect thereto in 39-51-2404, as the case may be, or the pendency of any such application, filing, or petition, unless and until such determination, redetermination, or decision has been modified or reversed by a subsequent redetermination or decision, in which event benefits shall be paid or denied for weeks of unemployment thereafter in accordance with such modifying or reversing redetermination or decision.

(2) If a deputy's determination or redetermination allowing benefits is affirmed in any amount by an appeals referee or by the board or if a decision of an appeals referee allowing benefits is affirmed in any amount by the board, such benefits shall be paid promptly regardless of any further appeal or the disposition of such appeal and no injunction, supersedeas, stay, or other writ or process suspending the payment of such benefits shall be issued by the board or any court. Benefits shall not be paid for any weeks of unemployment involved in such modification or reversal that begins after such final decision.

History: En. Sec. 6 (a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973; amd. Sec. 3, Ch. 368, L. 1975; amd. Sec. 1, Ch. 20, L. 1977; R.C.M. 1947, 87-107(f).

Cross-References

"Benefits" defined, 39-51-201.

"Board" defined, 39-51-201.

39-51-2406. Continuing jurisdiction of department over claims. The department shall have continuing jurisdiction over all claims filed for benefits to revise, modify, alter, cancel, and amend all orders, findings, and determinations made therein at any time and shall not lose such jurisdiction unless and until the jurisdiction of such claim and subject matter thereof has been taken by a court of competent jurisdiction in a proceedings filed therein as provided for in subsections (2) through (6) of 39-51-2410.

History: En. Sec. 6 (f) to (i), Ch. 137, L. 1937; Subd. (a) amd. Sec. 2, Ch. 233, L. 1943; amd. Sec. 4, Ch. 368, L. 1975; amd. Sec. 1, Ch. 24, L. 1977; amd. Sec. 1, Ch. 201, L. 1977; R.C.M. 1947, 87-108(part); amd. Sec. 1, Ch. 349, L. 1981.

Cross-References
"Benefits" defined, 39-51-201.
"Department" defined, 39-51-201.

39-51-2407. Procedure for disputed claims to be prescribed by regulation. The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with regulations prescribed by the department or the board for determining the rights of the parties, whether or not such regulations conform to common law or statutory rules of evidence and other technical rules or procedure.

History: En. Sec. 6 (f) to (i), Ch. 137, L. 1937; Subd. (a) amd. Sec. 2, Ch. 233, L. 1943; amd. Sec. 4, Ch. 368, L. 1975; amd. Sec. 1, Ch. 24, L. 1977; amd. Sec. 1, Ch. 201, L. 1977; R.C.M. 1947, 87-108(part); amd. Sec. 1, Ch. 349, L. 1981.

Cross-References
Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 3.
"Board" defined, 39-51-201.
"Department" defined, 39-51-201.

39-51-2408. Disputed claim — records of all proceedings to be kept. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded but need not be transcribed unless the disputed claim is further appealed.

History: En. Sec. 6 (f) to (i), Ch. 137, L. 1937; Subd. (a) amd. Sec. 2, Ch. 233, L. 1943; amd. Sec. 4, Ch. 368, L. 1975; amd. Sec. 1, Ch. 24, L. 1977; amd. Sec. 1, Ch. 201, L. 1977; R.C.M. 1947, 87-108(part).

39-51-2409. Witness fees. Witnesses subpoenaed pursuant to 39-51-2406 through 39-51-2410 shall be allowed fees at a rate fixed by the department. Such fees shall be deemed a part of the expense of administering this chapter.

History: En. Sec. 6 (f) to (i), Ch. 137, L. 1937; Subd. (a) amd. Sec. 2, Ch. 233, L. 1943; amd. Sec. 4, Ch. 368, L. 1975; amd. Sec. 1, Ch. 24, L. 1977; amd. Sec. 1, Ch. 201, L. 1977; R.C.M. 1947, 87-108(b); amd. Sec. 1, Ch. 349, L. 1981.

Cross-References
Witness fees and costs, 25-10-201; Title 26, ch. 2, part 5.
"Department" defined, 39-51-201.

39-51-2410. Finality of board's decision — judicial review. (1) Any decision of the board in the absence of an appeal therefrom as herein provided shall become final 30 days after the date of notification or mailing thereof and judicial review shall be permitted only after any party claiming to be aggrieved has exhausted all remedies before the board. The department is deemed to be a party to any judicial action involving any such decision and may be represented in any such action by an attorney employed by the department or, at the department's request, by the attorney general.

(2) Within 30 days after the date of notification or mailing of the decision of the board, any party aggrieved thereby may secure judicial review thereof by commencing an action in the district court of the county in which said party resides and in which action any other party to the proceeding before the board shall be made a defendant. In such action a petition, which need not be verified but which shall state the grounds upon which a review is sought, shall be served upon the commissioner of labor and industry and all interested parties in the manner provided in the Montana Rules of Civil Procedure.

(3) The department shall certify and file with said court all documents and papers and a record of all testimony taken in the matter, together with the board's findings of fact and decision. The board may also in its discretion certify to such court questions of law involved in any decision by it.

(4) Whenever the department seeks review of a decision of the board, all interested parties shall be served with a copy of its petition together with all documents filed with the court.

(5) In any judicial proceeding under 39-51-2406 through 39-51-2410, the findings of the board as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive and the jurisdiction of said court shall be confined to questions of law. Such action and the questions so certified shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under the workers' compensation law of this state.

(6) An appeal may be taken from the decision of the district court to the supreme court of Montana in the same manner, but not inconsistent with the provisions of this chapter, as is provided in civil cases. It shall not be necessary in any judicial proceeding under this section to enter exceptions to the rulings of the board and no bond shall be required for entering such appeal. Upon the final determination of such judicial proceeding, the department shall enter an order in accordance with such determination.

History: En. Sec. 6 (f) to (i), Ch. 137, L. 1937; Subd. (a) amd. Sec. 2, Ch. 233, L. 1943; amd. Sec. 4, Ch. 368, L. 1975; amd. Sec. 1, Ch. 24, L. 1977; amd. Sec. 1, Ch. 201, L. 1977; R.C.M. 1947, 87-108(c), (d); amd. Sec. 4, Ch. 349, L. 1981; amd. Sec. 14, Ch. 125, L. 1985; amd. Sec. 20, Ch. 234, L. 1987.

Cross-References

"Board" defined, 39-51-201.

"Department" defined, 39-51-201.

Part 25

Extended Benefits

39-51-2501. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Eligibility period", relating to extended benefits, means the period consisting of the weeks in the individual's benefit year which begin in an extended benefit period and, if the individual's benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(2) "Exhaustee" means an individual who, with respect to any week of unemployment in the eligibility period:

(a) has received, prior to such week, all of the regular benefits that were available under this chapter or any other state law, including dependents' allowances and benefits payable to federal civilian employees and ex-service personnel under 5 U.S.C. chapter 85, in the current benefit year that includes such week; provided that, for the purposes of this subsection, an individual shall be deemed to have received all of the regular benefits that were available although, as a result of a pending appeal with respect to wages that were not considered in the original monetary determination of the benefit year, the individual may subsequently be determined to be entitled to added regular benefits;

(b) the benefit year having expired prior to such week, has no or insufficient wages on the basis of which the individual could establish a new benefit year that would include such week;

(c) has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act and such other federal laws as are specified in regulations issued by the U.S. secretary of labor; and

(d) has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada, but if the individual is seeking such benefits and the appropriate agency finally determines that the individual is not entitled to benefits under such law, the individual is considered an exhaustee.

(3) "Extended benefits" means benefits, including benefits payable to federal civilian employees and to ex-service personnel pursuant to 5 U.S.C. chapter 85, payable to an individual under the provisions of this part for weeks of unemployment in the individual's eligibility period.

(4) "Extended benefit period" means a period which:

(a) begins with the third week after a week for which there is a state "on" indicator, provided that no extended benefit period may begin by reason of a state "on" indicator before the 14th week following the end of a prior extended benefit period which was in effect with respect to this state; and

(b) ends with the third week after the first week for which there is a state "off" indicator or the 13th consecutive week of such period.

(5) (a) "Rate of insured unemployment", for purposes of 39-51-2504 and 39-51-2505, means the percentage derived by dividing the average weekly number of individuals filing claims for regular benefits in this state for weeks of unemployment with respect to the most recent 13-consecutive-week period, as determined by the department on the basis of its reports to the U.S. secretary of labor, by the average monthly employment covered under this chapter for the first 4 of the most recent 6 completed calendar quarters ending before the end of such 13-week period.

(b) Computations required by the provisions of subsection (5)(a) shall be made by the department in accordance with regulations prescribed by the U.S. secretary of labor.

(6) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law, including benefits payable to federal civilian employees and to ex-service personnel pursuant to 5 U.S.C. chapter 85, other than extended benefits.

(7) "State law" means the unemployment insurance law of any state approved by the U.S. secretary of labor under section 3304 of the Internal Revenue Code of 1954.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(a)(1), (a)(6) thru (a)(11), (f)(2); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 9, Sp. L. 1981; amd. Sec. 4, Ch. 84, L. 1983; amd. Sec. 21, Ch. 234, L. 1987.

Cross-References

"Benefits" defined, 39-51-201.
"Department" defined, 39-51-201.
"State" defined, 39-51-201.
"Week" defined, 39-51-201.

39-51-2502. Repealed. Sec. 5, Ch. 9, Sp. L. 1981.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(a)(2).

39-51-2503. Repealed. Sec. 5, Ch. 9, Sp. L. 1981.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(a)(3).

39-51-2504. State "on" indicator — when. There is a state "on" indicator for this state for a week if the department determines, in accordance with the regulations of the U.S. secretary of labor, that:

(1) (a) the rate of insured unemployment equals or exceeds 5% for any such week and the immediately preceding 12 weeks; and

(b) the insured unemployment rate equals or exceeds 120% of the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years; or

(2) if the rate of insured unemployment for such week is 5% or more but the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years is less than 120%, the insured unemployment rate for such week and the immediately preceding 12 weeks is 6% or more.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(a)(4); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 2, Ch. 9, Sp. L. 1981.

Cross-References

"Department" defined, 39-51-201.

"Week" defined, 39-51-201.

39-51-2505. State "off" indicator — when. There is a state "off" indicator for this state for a week if the department determines, in accordance with the regulations of the U.S. secretary of labor, that:

(1) for the period consisting of such week and the immediately preceding 12 weeks the rate of insured unemployment (not seasonally adjusted) under this chapter is less than 5%; or

(2) the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years is less than 120%.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(a)(5); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 3, Ch. 9, Sp. L. 1981.

Cross-References

"Department" defined, 39-51-201.

"Week" defined, 39-51-201.

39-51-2506. Beginning and termination of extended benefit period — announcement of. Whenever an extended benefit period is to become effective in this state as a result of a state "on" indicator, or an extended benefit period is to be terminated in this state as a result of state "off" indicators, the department shall make an appropriate public announcement.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(f)(1); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 4, Ch. 9, Sp. L. 1981.

Cross-References

"Benefits" defined, 39-51-201.

"Department" defined, 39-51-201.

39-51-2507. Effect of state law provisions relating to regular benefits on claims for and the payment of extended benefits. Except when the result would be inconsistent with the other provisions of this part, as provided in the regulations of the department, the provisions of this chapter which apply to claims for or the payment of regular benefits shall apply to claims for and the payment of extended benefits.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(b); amd. Sec. 1, Ch. 349, L. 1981.

Cross-References

"Benefits" defined, 39-51-201.

"Department" defined, 39-51-201.

39-51-2508. Eligibility requirements for extended benefits — disqualifications — acceptance of suitable work. (1) An individual is eligible to receive extended benefits with respect to any week of unemployment in this eligibility period only if the department finds that with respect to the week that the individual:

(a) is an exhaustee, as defined in 39-51-2501;

(b) has been paid total wages for employment in the base period, as defined in 39-51-201, in an amount not less than:

(i) 1.5 times the wages earned in the calendar quarter in which wages were the highest during the base period;

(ii) 40 times the individual's most recent weekly benefit amount; or

(iii) insured wages for 20 weeks of work;

(c) is not disqualified for the receipt of regular benefits pursuant to part 23 of this chapter and, if disqualified, the individual satisfies the requirements for requalification in that part; and

(d) has satisfied the other requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits.

(2) In addition to the disqualifications provided for in subsection (1)(c), an individual is disqualified for extended benefits if the individual fails to seek work. The disqualification continues for the week in which the failure occurs and until the individual has performed services, other than self-employment, for which remuneration is received equal to or in excess of the individual's weekly benefit amount in 4 separate weeks subsequent to the date the act causing the disqualification occurred.

(3) A regular benefit claimant who is disqualified for gross misconduct under 39-51-2303(2) may not be paid extended benefits unless the individual has earned at least eight times the weekly benefit amount after the date of the disqualification.

(4) A regular benefit claimant who voluntarily leaves work to attend school and, pursuant to 39-51-2302(3), requalifies for regular benefits may not be paid extended benefits unless the individual has earned at least six times the weekly benefit amount.

(5) For the purposes of determining eligibility for extended benefits, the department shall by rule define the term "suitable work". The definition must be in accordance with the definition required by the Omnibus Reconciliation Act of 1980, P.L. 96-499, and as may be amended after March 19, 1981.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(c); amd. Sec. 1, Ch. 99, L. 1981; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 272, L. 1983; amd. Sec. 5, Ch. 171, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 171 inserted (1)(b) establishing wage amounts applicable to determining eligibility for extended benefits; in (2) substituted "subsection (1)(c)" for "subsection (1)(b)"; and made minor changes in style. Amendment effective March 25, 1993.

Cross-References

"Benefits" defined, 39-51-201.
"Department" defined, 39-51-201.
"Week" defined, 39-51-201.
"Weekly benefit amount" defined, 39-51-201.

39-51-2509. Weekly extended benefit amount. The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(d).

Cross-References

"Week" defined, 39-51-201.
"Weekly benefit amount" defined, 39-51-201.

39-51-2510. Total extended benefit amount. The total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be the least of the following amounts:

(1) 50% of the total amount of regular benefits which were payable to him under this chapter in his applicable benefit year;

(2) 13 times his weekly benefit amount which was payable to him under this chapter for a week of total unemployment in the applicable benefit year.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(e).

Cross-References

"Benefit year" defined, 39-51-201.
"Benefits" defined, 39-51-201.
"State" defined, 39-51-201.
"Week" defined, 39-51-201.

"Weekly benefit amount" defined, 39-51-201.

39-51-2511. Extended benefits filed interstate. Except during the first 2 weeks of an extended benefit period, no extended benefits will be paid to an individual filing from a state in which the state indicator is "off".

History: En. Sec. 1, Ch. 58, L. 1981.

Part 26

Trade Readjustment

39-51-2601. Limitations on weeks of combined extended benefits and trade readjustment allowances. Notwithstanding any other provisions of this chapter, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would but for this section be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero) by the product of the number of weeks for which the individual received trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

History: En. Sec. 2, Ch. 7, Sp. L. 1981.

39-51-2602. Approved training under federal programs. (1) Notwithstanding any other provisions of this chapter, no otherwise eligible individual may be denied benefits for any week:

(a) because of participation in training approved under Section 236(a)(1) of the federal Trade Act of 1974 or under Title III of the federal Job Training Partnership Act;

(b) because of participation in approved training described in subsection (1)(a) by reason of leaving work to enter the training if the work left is not suitable employment; or

(c) because of the application to any such week in training of provisions in this chapter or any federal unemployment insurance law administered by this agency, relating to availability for work, active search for work, or refusal to accept work.

(2) For purposes of this section, "suitable employment" means work of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the federal Trade Act of 1974 and the federal Job Training Partnership Act, and for which the wages are not less than 80% of the individual's average weekly wage as determined for the purposes of the federal Trade Act of 1974 and the federal Job Training Partnership Act.

History: En. Sec. 1, Ch. 7, Sp. L. 1981; amd. Sec. 19, Ch. 373, L. 1991.

Parts 27 through 30 reserved

Part 31
Protections and Limitations on Rights and Benefits

39-51-3101. Protection against self-incrimination. No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the department or board, the chairman of an appeal tribunal, or any duly authorized representative of either of them or in obedience to the subpoena of the department or board or any member thereof or any duly authorized representative of the department in any cause or proceeding before the department or board on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture, but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

History: En. Subd. (h), Sec. 11, Ch. 137, L. 1937; amd. Sec. 16, Ch. 368, L. 1975; R.C.M. 1947, 87-127; amd. Sec. 1, Ch. 349, L. 1981.

Cross-References

Self-incrimination, Art. II, sec. 25, Mont. Const.

"Board" defined, 39-51-201.

"Department" defined, 39-51-201.

39-51-3102. Certain agreements in violation of chapter void. (1) Any agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this chapter shall be void.

(2) Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions required under this chapter from such employer shall be void.

History: En. Subd. (a), Sec. 15, Ch. 137, L. 1937; amd. Sec. 9, Ch. 164, L. 1941; R.C.M. 1947, 87-141(part).

Cross-References

"Benefits" defined, 39-51-201.

"Contributions" defined, 39-51-201.

39-51-3103. Employer prohibited from making, requiring, or accepting deduction from wages or requiring or accepting waiver of rights under chapter — penalty for violation. (1) No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions required from him or require or accept any waiver of any right hereunder by an individual in his employ.

(2) Any employer or officer or agent of an employer who violates any provision of this section or 39-51-3102 shall, for each offense, be fined not more than $1,000 or be imprisoned for not more than 6 months or both.

History: En. Subd. (a), Sec. 15, Ch. 137, L. 1937; amd. Sec. 9, Ch. 164, L. 1941; R.C.M. 1947, 87-141(part).

Cross-References

"Contributions" defined, 39-51-201.

"Wages" defined, 39-51-201.

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

39-51-3104. Limitation of fees in claim for benefits — penalty for violation. (1) No individual claiming benefits shall be charged fees of any kind in any proceeding under this chapter by the department or its representatives or by any court or any officer thereof.

(2) Any individual claiming benefits in any proceeding before the chairman of an appeal tribunal or the department or its representatives, the board, or a court may be represented by counsel or other duly authorized agent, but no such counsel or agents shall either charge or receive for such services more than an amount approved by the department or board.

(3) Any person who violates any provision of this section shall, for each such offense, be fined not more than $500 or imprisoned for not more than 6 months or both.

History: En. Subd. (b), Sec. 15, Ch. 137, L. 1937; amd. Sec. 9, Ch. 164, L. 1941; amd. Sec. 29, Ch. 368, L. 1975; R.C.M. 1947, 87-142; amd. Sec. 1, Ch. 349, L. 1981.

Cross-References

"Benefits" defined, 39-51-201.
"Board" defined, 39-51-201.
"Department" defined, 39-51-201.
Classification of offenses, 45-1-201.
"Misdemeanor" defined, 45-2-101.

39-51-3105. Assignment, pledge, or encumbrance of right to benefits void — benefits exempt from levy, execution, attachment, or other remedy for collection of debt — exception. Any assignment, pledge, or encumbrance of any right to benefits that are or may become due or payable under this chapter is void, and the rights to benefits are exempt from levy, execution, attachment, or any other remedy provided for the collection of debt, and benefits received by any individual, so long as they are not mingled with other funds of the recipient, are exempt from any remedy for the collection of all debts except as provided in 39-51-3106 and 39-51-3206. Any waiver of any exemption provided for in this section is void.

History: En. Subd. (c), Sec. 15, Ch. 137, L. 1937; amd. Sec. 9, Ch. 164, L. 1941; R.C.M. 1947, 87-143; amd. Sec. 22, Ch. 234, L. 1987; amd. Sec. 6, Ch. 171, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 171 at end of first sentence inserted reference to 39-51-3206; and made minor changes in style. Amendment effective March 25, 1993.

Cross-References

"Benefits" defined, 39-51-201.

39-51-3106. Child support interception of unemployment benefits. (1) For purposes of this section, the following definitions apply:

(a) "Unemployment benefits" means any benefits payable under the Montana unemployment insurance law, including amounts payable by the department pursuant to an agreement under any federal law providing for benefits, assistance, or allowances with respect to unemployment.

(b) "Child support obligations" includes only obligations that are being enforced pursuant to a plan described in section 454 of the Social Security Act which has been approved by the secretary of health and human services under Part D of Title IV of the Social Security Act.

(c) "State or local child support enforcement agency" means any agency of a state or political subdivision thereof operating pursuant to a plan provided for in subsection (1)(b).

(2) An individual filing a new claim for unemployment benefits shall, at the time of filing the claim, disclose whether or not he owes child support obligations. If an individual discloses that he owes child support obligations and the individual is determined to be eligible for unemployment benefits, the

department shall notify the state or local child support enforcement agency enforcing such obligation that the individual has been determined to be eligible for unemployment benefits.

(3) The department shall deduct and withhold from any unemployment benefits payable to an individual owing child support obligations:

(a) the amount specified by the individual to the department to be deducted and withheld under this subsection if neither subsection (3)(b) nor (3)(c) is applicable;

(b) the amount, if any, determined pursuant to an agreement submitted to the department under section 454(20)(B)(i) of the Social Security Act by the state or local child support enforcement agency, unless subsection (3)(c) is applicable; or

(c) any amount otherwise required to be so deducted and withheld from such unemployment benefits pursuant to legal process, as that term is defined in section 462(e) of the Social Security Act, properly served upon the department.

(4) The department shall pay any amount deducted and withheld under subsection (3) to the appropriate state or local child support enforcement agency.

(5) Deductions may be made pursuant to this section only if appropriate arrangements have been made for reimbursement by the state or local child support enforcement agency for the administrative costs incurred by the department under this section.

(6) Any amount deducted and withheld under subsection (3) must be treated as if it were paid to the individual as unemployment benefits and paid by such individual to the state or local child support enforcement agency in satisfaction of the individual's child support obligations.

History: En. Sec. 1, Ch. 8, Sp. L. 1981; amd. Sec. 5, Ch. 84, L. 1983.

Part 32

General Penalties

39-51-3201. Making false statement or representation or failing to disclose material fact in order to obtain or increase benefits — administrative penalty and remedy. (1) A person who makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact in order to obtain or increase any benefit or other payment under this chapter or under an employment security law of any other state or territory or the federal government, either for himself or for any other person, is:

(a) disqualified for benefits thereafter for a period of not more than 52 weeks, beginning with the first compensable week following the date of such determination by the department, the length of time of the disqualification as herein described to be determined by the department in accordance with the severity of each case; and

(b) required to repay to the department, either directly or as authorized by the department, by offset of future benefits to which he may be entitled, or by a combination of both such methods, a sum equal to the amount wrongfully received by him, plus the department may assess a penalty not to exceed 100%

of the fraudulently obtained benefits, except that future benefits may not be used to offset the penalty due. However, he is not required to repay any amount wrongfully obtained more than 5 years prior to the date of the department's determination that he made false statements, willful nondisclosure, or misrepresentation.

(2) All money accruing from the penalty under subsection (1)(b) must be deposited in the federal special revenue account. Money deposited in that account may be appropriated to the department to be used to detect and collect unpaid taxes and overpayments of benefits to the extent that federal grant revenues are inadequate for these purposes. Money in the account not appropriated for these purposes must be transferred by the department to the unemployment insurance trust fund at the end of each fiscal year.

History: En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969; amd. Sec. 1, Ch. 17, L. 1975; amd. Sec. 30, Ch. 368, L. 1975; amd. Sec. 1, Ch. 240, L. 1977; R.C.M. 1947, 87-145(1); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 226, L. 1985; amd. Sec. 27, Ch. 373, L. 1991.

39-51-3202. Making false statement or representation or failing to disclose material fact in order to obtain or increase benefits — criminal penalty. (1) A person who, in order to obtain or increase for personal gain or for any other person benefits under this chapter or under an employment security law of any other state or territory or the federal government, knowingly makes a false statement or representation or knowingly fails to disclose a material fact is guilty of a crime under 45-7-203, and the department may cause criminal proceedings to be initiated against the person.

(2) A person will be required to repay to the department an amount as determined by 39-51-3201(1)(b).

(3) For purposes of this section, restitution awarded under this section must include a sum equal to the amount wrongfully received, plus the department may assess a penalty not to exceed 100% of the amount wrongfully received. All money accruing from the penalty must be deposited in the federal special revenue account. Money deposited in that account may be appropriated to the department to be used to detect and collect unpaid taxes and overpayments of benefits to the extent that federal grant revenues are inadequate for these purposes. Money in the account not appropriated for these purposes must be transferred by the department to the unemployment insurance trust fund at the end of each fiscal year.

History: En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969; amd. Sec. 1, Ch. 17, L. 1975; amd. Sec. 30, Ch. 368, L. 1975; amd. Sec. 1, Ch. 240, L. 1977; R.C.M. 1947, 87-145(2); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 23, Ch. 234, L. 1987; amd. Sec. 28, Ch. 373, L. 1991.

Cross-References

"Benefits" defined, 39-51-201.
"Department" defined, 39-51-201.
"State" defined, 39-51-201.
"Week" defined, 39-51-201.

39-51-3203. Obtaining benefits through deception or other fraudulent means — criminal penalty. A person who, through deception or other fraudulent means, obtains benefits which he is not entitled to under this chapter or under an employment security law of any other state or territory or the federal government or a person legally accountable for such conduct under 45-2-302 is guilty of a crime under 45-6-301, and a county attorney may initiate criminal proceedings against him.

History: En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969; amd. Sec. 1, Ch. 17, L. 1975; amd. Sec. 30, Ch. 368, L. 1975; amd. Sec. 1, Ch. 240, L. 1977; R.C.M. 1947, 87-145(3).

Cross-References

"Benefits" defined, 39-51-201.

"State" defined, 39-51-201.

39-51-3204. Employing unit making false statement or representation, failing to disclose material fact, or failing or refusing to make contributions or other payments, furnish reports, or permit inspection or copying of records — criminal penalty. Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false or who knowingly fails to disclose a material fact to prevent or reduce the payment of benefits to any individual entitled thereto or to avoid becoming or remaining subject hereto or to avoid or reduce any contribution or other payment required from an employing unit under this chapter or under the employment security law of any other state or territory or the federal government or who willfully fails or refuses to make any such contributions or other payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder shall be punished by a fine of not less than $50 or more than $500 or by imprisonment for not less than 3 days or more than 30 days in the county jail or by both such fine and imprisonment, and each such false statement or representation or failure to disclose a material fact and each day of such failure or refusal shall constitute a separate offense.

History: En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969; amd. Sec. 1, Ch. 17, L. 1975; amd. Sec. 30, Ch. 368, L. 1975; amd. Sec. 1, Ch. 240, L. 1977; R.C.M. 1947, 87-145(4).

Cross-References

"Benefits" defined, 39-51-201.
"Contributions" defined, 39-51-201.
"Employing unit" defined, 39-51-201.
"State" defined, 39-51-201.

39-51-3205. Criminal penalty for violations of chapter where no penalty prescribed. Any person who shall willfully violate any provision of this chapter or any order or rule thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this chapter and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not less than $50 or more than $500 or by imprisonment for not less than 3 days or more than 30 days in the county jail or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

History: En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969; amd. Sec. 1, Ch. 17, L. 1975; amd. Sec. 30, Ch. 368, L. 1975; amd. Sec. 1, Ch. 240, L. 1977; R.C.M. 1947, 87-145(5).

Cross-References

"Benefits" defined, 39-51-201.
"Contributions" defined, 39-51-201.
"Department" defined, 39-51-201.
"Fund" defined, 39-51-201.
"Misdemeanor" defined, 45-2-101.

39-51-3206. Collection of benefit overpayments. A person who receives benefits not authorized by this chapter shall repay to the department either directly or, as authorized by the department, by offset of future benefits to which the claimant may be entitled, or by a combination of both methods, a sum equal to the amount of the overpayment. A benefit offset may not exceed 50% of the weekly benefits to which a claimant is entitled unless the claimant gives written consent. The sum is collectible in the manner provided in this chapter for the collection of past-due contributions unless the department finds that the benefits were received through no fault of the person and the recovery of the benefits would be against equity and good conscience. An action for collection of overpaid benefits must be brought within 5 years after the date of the overpayment. Notwithstanding any other provision of this chapter, the department may recover an overpayment of benefits paid to any individual under the laws of this state or another state or under an unemployment benefit program of the United States.

History: **En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969; amd. Sec. 1, Ch. 17, L. 1975; amd. Sec. 30, Ch. 368, L. 1975; amd. Sec. 1, Ch. 240, L. 1977; R.C.M. 1947, 87-145(6); amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 50, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 24, Ch. 234, L. 1987; amd. Sec. 56, Ch. 83, L. 1989; amd. Sec. 7, Ch. 171, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 171 inserted second sentence limiting benefit offset to 50% of weekly benefits absent written consent. Amendment effective March 25, 1993.

39-51-3207. Authority to determine uncollectibility of debts — transfer of debts for collection — liability for payment of fees and costs of collection. (1) After making all reasonable efforts to collect unpaid contributions, assessments under 39-51-404(4), and penalties and interest thereon, or overpaid benefits under 39-51-3206 and interest thereon, the department may determine a debt to be uncollectible. Upon determining that a debt is uncollectible, the department may transfer the debt to the state auditor for collection as provided in 17-4-104.

(2) Subject to approval by the department, reasonable fees or costs of collection incurred by the state auditor may be added to the amount of the debt, including added fees or costs. The debtor is liable for repayment of the amount of the debt plus fees or costs added pursuant to this subsection. All money collected must be returned to the department to be applied to the debt, except that all fees or costs collected must be retained by the state auditor. If less than the full amount of the debt is collected, the state auditor shall retain only a proportionate share of the collection fees or costs.

History: **En. Sec. 25, Ch. 234, L. 1987; amd. Sec. 8, Ch. 419, L. 1989.**

CHAPTERS 52 THROUGH 70

RESERVED

CHAPTER 71

WORKERS' COMPENSATION

Part 1 — General Provisions

39-71-101. Short title.
39-71-102. Reference to plans.
39-71-103. Compensation provisions.
39-71-104. Repealed.
39-71-105. Declaration of public policy.
39-71-106. No liability for reporting violation.
39-71-107 through 39-71-115 reserved.
39-71-116. Definitions.
39-71-117. Employer defined.
39-71-118. Employee, worker, and volunteer firefighter defined.
39-71-119. Injury and accident defined.
39-71-120. Independent contractor defined.
39-71-121. Repealed.
39-71-122. Repealed.
39-71-123. Wages defined.

Part 2 — Administrative Provisions

39-71-201. Administration fund.
39-71-202. Office of department.
39-71-203. Powers of department — rules.
39-71-204. Rescission, alteration, or amendment by department of its orders, decisions, or awards — effect — appeal.
39-71-205. Department authorized to charge certain fees — disposition of.
39-71-206. Legal advisers of department and state fund — investigative and prosecution services.
39-71-207. Repealed.
39-71-208. Blank forms, minutes, and records.
39-71-209. Publication of reports and bulletins authorized.
39-71-210. Repealed.
39-71-211. Fraud detection and prevention unit — expenditure accounting.
39-71-212 through 39-71-220 reserved.
39-71-221. Public records of department — right to inspect.
39-71-222. Duties of department regarding inspection and examination of records.
39-71-223. Certified copies of public records — fees.
39-71-224. Records exempt from disclosure — separation of exempt material from nonexempt.
39-71-225. Workers' compensation data base system.
39-71-226. Claims expenditures codes.

Part 3 — Miscellaneous Provisions

39-71-301. Certificates and certified copies as evidence.
39-71-302. What included in computing payroll.
39-71-303. Work paid for in property other than money — wages to be determined by department.
39-71-304. Books, records, and payrolls to be open to inspection — penalty for refusal — subpoenas.
39-71-305. Repealed.
39-71-306. Insurers to file summary reports of benefits paid for injuries and statements of medical expenditures.
39-71-307. Employers and insurers to file reports of accidents — penalty.
39-71-308. Neglect or refusal of public corporation to file payroll reports — arbitrary assessment by department.
39-71-309. Repealed.
39-71-310 through 39-71-314 reserved.

39-71-315. Prohibited actions — penalty.
39-71-316. Filing true claim — obtaining benefits through deception or other fraudulent means.
39-71-317. Employer not to terminate worker for filing claim — preference — jurisdiction over dispute.
39-71-318. Hearings — rules of evidence.

Part 4 — Coverage, Liability, and Subrogation

39-71-401. Employments covered and employments exempted.
39-71-402. Extraterritorial application and reciprocity — exception.
39-71-403. Plan three exclusive for state agencies — election of plan by other public corporations — financing of self-insurance fund.
39-71-404. Repealed.
39-71-405. Liability of employer who contracts work out.
39-71-406. Deduction from wages of any part of premium a misdemeanor.
39-71-407. Liability of insurers — limitations.
39-71-408. Liability as first lien in case of bankruptcy or failure.
39-71-409. Waivers by employee invalid.
39-71-410. Repealed.
39-71-411. Provisions of chapter exclusive remedy — nonliability of insured employer.
39-71-412. Liability of third party other than employer or fellow employee — additional cause of action.
39-71-413. Liability of fellow employee for intentional and malicious acts or omissions — additional cause of action.
39-71-414. Subrogation.
39-71-415. Procedure for resolving disputes regarding independent contractor status.
39-71-416 through 39-71-420 reserved.
39-71-421. Financial incentives to institute safety programs.
39-71-422 through 39-71-425 reserved.
39-71-426. Reciprocal agreements with Canadian provinces — exception.
39-71-427. Conditions for reciprocal agreements.
39-71-428. Denial of reciprocity.
39-71-429 and 39-71-430 reserved.
39-71-431. Assigned risk plan.
39-71-432. Definitions.
39-71-433. Group purchase of workers' compensation insurance.
39-71-434. Deductible insurance policy provision for medical benefits.
39-71-435. Workers' compensation and employers' liability insurance — optional deductibles.

Part 5 — Uninsured and Underinsured Employers

39-71-501. Definition of uninsured employer.
39-71-502. Creation and purpose of uninsured employers' fund.
39-71-503. Administration of fund — appropriation.
39-71-504. Funding of fund — option for agreement between department and injured employee.
39-71-505. Applicability of other provisions of chapter to fund.
39-71-506. Lien for payment of unpaid penalties and claims — levy and execution.
39-71-507. Department to order uninsured employer to cease operations — noncompliance with order a misdemeanor — coordination of remedies.
39-71-508. Coordination of remedies.
39-71-509. Action against uninsured employer — limitation of employer's defenses.
39-71-510. Limitation on benefit entitlement under fund.
39-71-511. Setoffs to claim against fund.
39-71-512 through 39-71-514 reserved.
39-71-515. Independent cause of action.
39-71-516. District court venue and jurisdiction for independent cause of action.
39-71-517. Requirement to serve papers.
39-71-518. Setoffs against remaining liability.
39-71-519. Settlement.
39-71-520. Time limit to appeal.
39-71-521 through 39-71-530 reserved.
39-71-531. Definition of underinsured employer.

39-71-532. Penalties and remedies for underinsuring.
39-71-533. Collection of payments from underinsured employer.
39-71-534. Creation of underinsured employers' fund.

Part 6 — Claims for Benefits

39-71-601. Statute of limitation on presentment of claim — waiver.
39-71-602. Statute of limitation not to apply during minority or mental incompetency unless guardian appointed.
39-71-603. Notice of injuries other than death to be submitted within thirty days.
39-71-604. Application for compensation.
39-71-605. Examination of employee by physician — effect of refusal to submit to examination — report and testimony of physician — cost.
39-71-606. Insurer to accept or deny claim within thirty days of receipt — notice of benefits and entitlements to claimants — notice of denial — notice of reopening — notice to employer.
39-71-607. Suspension of payments by insurer pending receipt of medical information.
39-71-608. Payments within thirty days by insurer without admission of liability or waiver of defense authorized — notice.
39-71-609. Denial of claim after payments made or termination of all benefits or reduction to partial benefits by insurer — fourteen days' notice required.
39-71-610. Termination of benefits by insurer — department order to pay disputed benefits prior to hearing — limitation on order — right of reimbursement.
39-71-611. Costs and attorneys' fees payable on denial of claim or termination of benefits later found compensable.
39-71-612. Costs and attorneys' fees that may be assessed against an insurer by workers' compensation judge.
39-71-613. Regulation of attorneys' fees — forfeiture of fee for noncompliance.
39-71-614. Calculation of attorney fees — limitation.

Part 7 — Compensation and Benefits Generally

39-71-701. Compensation for temporary total disability — exception.
39-71-702. Compensation for permanent total disability.
39-71-703. Compensation for permanent partial disability.
39-71-704. Payment of medical, hospital, and related services — fee schedules and hospital rates — fee limitation.
39-71-705. Repealed.
39-71-706. Repealed.
39-71-707. Repealed.
39-71-708. Compensation for disfigurement.
39-71-709. Repealed.
39-71-710. Termination of benefits upon retirement.
39-71-711. Impairment evaluation — ratings.
39-71-712. Temporary partial disability benefits.
39-71-713 through 39-71-720 reserved.
39-71-721. Compensation for injury causing death — limitation.
39-71-722. Who constitutes beneficiary to be determined as of date of accident.
39-71-723. How compensation to be divided among beneficiaries.
39-71-724. Payment of compensation to beneficiary not a resident of United States.
39-71-725. Payment of burial expense.
39-71-726. No compensation after death where death not result of injury.
39-71-727. Payment for prescription drugs — limitations.
39-71-728 through 39-71-735 reserved.
39-71-736. Compensation — from what date paid.
39-71-737. Compensation to run consecutively — exceptions.
39-71-738. Repealed.
39-71-739. Compensation in case of changes in degree of injury.
39-71-740. Payments — how made in most cases.
39-71-741. Compromise settlements and lump-sum payments.
39-71-742. Who may receive payment.
39-71-743. Assignment or attachment of payments.

39-71-744. Benefits not due while claimant is incarcerated — exceptions.

Part 8 — Compensation for Occupational Deafness

39-71-801. Occupational deafness compensated as provided in part.
39-71-802. Definitions.
39-71-803. Occupational deafness distinguished from traumatic loss of hearing.
39-71-804. Compensable loss of hearing confined to certain frequencies.
39-71-805. Determining percent of hearing loss.
39-71-806. Disability payments not payable for temporary hearing loss due to prolonged exposure to noise.
39-71-807. Compensation for wage loss where employee transferred due to occupational deafness.
39-71-808. Compensation for occupational deafness.
39-71-809. Liability of employer for occupational deafness.
39-71-810. Employee to have worked ninety days for employer from whom compensation claimed.
39-71-811. Minimum exposure and noise intensity level required.
39-71-812. Limitation on amount of compensation payable to employee under part.
39-71-813. Limitation provisions applicable — when provisions begin to run.

Part 9 — Subsequent Injury Received by Vocationally Handicapped

39-71-901. Definitions.
39-71-902. Fund to receive payment from insurer for each death under chapter — assessment of insurers.
39-71-903. Procedure and practice.
39-71-904. Rules for certification.
39-71-905. Certification as vocationally handicapped.
39-71-906. Employer hiring or retaining certified vocationally handicapped person to file information with department — effect of failure to file.
39-71-907. Certified vocationally handicapped person to be compensated for injury as provided by chapter — insurer liability for compensation limited — appropriation.
39-71-908. Notification of fund of its potential liability under part — review by fund.
39-71-909. Effect of fund's failure to give notification of its intent to dispute liability — subsequent notification by fund authorized.
39-71-910. Procedure for resolving disputes as to liability under part.
39-71-911. Obligation to make payments on behalf of fund not an independent liability.
39-71-912. Reimbursement to be promptly made.
39-71-913. Payments by fund directly to persons entitled.
39-71-914. Repealed.

Part 10 — Referral of Disabled Workers for Vocational Rehabilitation

39-71-1001. Repealed.
39-71-1002. Repealed.
39-71-1003. Eligibility for vocational rehabilitation expenses.
39-71-1004. Industrial accident rehabilitation account.
39-71-1005. Repealed.
39-71-1006 through 39-71-1010 reserved.
39-71-1011. Definitions.
39-71-1012. Repealed.
39-71-1013. Agreement between worker and insurer regarding option.
39-71-1014. Rehabilitation services — required and provided by insurers and the department of social and rehabilitation services.
39-71-1015 through 39-71-1019. Repealed.
39-71-1020 through 39-71-1022 reserved.
39-71-1023. Repealed.
39-71-1024. Repealed.
39-71-1025. Auxiliary rehabilitation benefits.
39-71-1026. Repealed.

39-71-1027 through 39-71-1030 reserved.
39-71-1031. Exchange of information.
39-71-1032. Termination of benefits for noncooperation with rehabilitation provider — department hearing and appeal.
39-71-1033. Repealed.

Part 11 — Managed Care and Preferred Provider Organizations

39-71-1101. Choice of physician by worker — change of physician — receipt of care from managed care organization.
39-71-1102. Preferred provider organizations — establishment — limitations.
39-71-1103. Workers' compensation managed care.
39-71-1104. Managed care organizations — notification.
39-71-1105. Managed care organizations — application — certification.
39-71-1106. Compliance with medical treatment required — termination of compensation benefits for noncompliance.
39-71-1107. Domiciliary care — requirements — evaluation.
39-71-1108. Physician self-referral prohibition.
39-71-1109. Medical advisory committees — composition — function.

Parts 12 through 14 reserved

Part 15 — Montana Safety Culture Act

39-71-1501. Short title.
39-71-1502. Purpose.
39-71-1503. Safety consultation.
39-71-1504. Safety programs — educational activities.
39-71-1505. Rulemaking authority.
39-71-1506. Notification of safety consultation services available by insurer.
39-71-1507. Safety consultation services — safety program as provision of insurance contract or agreement.
39-71-1508. Safety consultation services — insurer's exemption from civil liability — exceptions.

Parts 16 through 19 reserved

Part 20 — Rehabilitation Benefits

39-71-2001. Rehabilitation benefits.

Part 21 — Compensation Plan Number One

39-71-2101. General requirements for electing coverage under plan.
39-71-2102. Proof of solvency to be filed.
39-71-2103. Employer permitted to carry on business and settle directly with employee — individual liability.
39-71-2104. Renewal of application.
39-71-2105. Additional proof of solvency — revocation of order.
39-71-2106. Requiring security of employer.
39-71-2107. When employer to make deposit or security to guarantee payment of compensation.
39-71-2108. Failure of employer to pay compensation — duty of department.
39-71-2109. Repealed.

Part 22 — Compensation Plan Number Two

39-71-2201. Election to be bound by plan.
39-71-2202. Policies made subject to chapter.
39-71-2203. Content of policies — policies subject to approval, change, or revision by department.
39-71-2204. Insurer to submit notice of coverage within thirty days — penalty for failure.
39-71-2205. Policy in effect until canceled or replaced — twenty-day notification of cancellation required — penalty.
39-71-2206. Deposits by insurer with department to guarantee payment of liability.
39-71-2207. Repealed.
39-71-2208 through 39-71-2210 reserved.

39-71-2211. Premium rates for construction industry — filing required.

Part 23 — Compensation Plan Number Three

39-71-2301. Repealed.
39-71-2302. Repealed.
39-71-2303. Renumbered 39-71-2336 by Code Commissioner, 1989.
39-71-2304. Repealed.
39-71-2305. Repealed.
39-71-2306. Repealed.
39-71-2307. Renumbered 39-71-2339 by Code Commissioner, 1989.
39-71-2308. Renumbered 39-71-2340 by Code Commissioner, 1989.
39-71-2309. Repealed.
39-71-2310. Repealed.
39-71-2311. Intent and purpose of plan.
39-71-2312. Definitions.
39-71-2313. State compensation insurance fund created.
39-71-2314. State fund — assigned risk plan.
39-71-2315. Management of state fund — powers and duties of the board — business plan required.
39-71-2316. Powers of the state fund.
39-71-2317. Appointment of executive director — management staff.
39-71-2318. Personal liability excluded.
39-71-2319. Assets and liabilities of prior state fund.
39-71-2320. Property of the state fund — investment required.
39-71-2321. What to be deposited in state fund.
39-71-2322. Money in state fund held in trust — disposition of funds upon repeal of chapter.
39-71-2323. Surplus in state fund — payment of dividends.
39-71-2324. Repealed.
39-71-2325. State fund to keep accounts of segregations.
39-71-2326. Repealed.
39-71-2327. Earnings of state fund to be credited to fund — improper use a felony.
39-71-2328 and 39-71-2329 reserved.
39-71-2330. Rate setting.
39-71-2331 through 39-71-2335 reserved.
39-71-2336. Manner of electing — contract or policy of insurance — payment of premium.
39-71-2337. State fund to submit notice of coverage within thirty days — penalty for failure.
39-71-2338. Repealed.
39-71-2339. Cancellation of coverage — thirty days' notice required.
39-71-2340. Collection in case of default.
39-71-2341. Variable pricing — higher premium by state fund for noncompliance with safety program — expenditure accounting.
39-71-2342 through 39-71-2350 reserved.
39-71-2351. Purpose of separation of state fund liability as of July 1, 1990, and of separate funding of claims before and on or after that date.
39-71-2352. Separate payment structure and sources for claims for injuries resulting from accidents that occurred before July 1, 1990, and on or after July 1, 1990 — spending limit.
39-71-2353. Repealed.
39-71-2354. Use of old fund liability tax proceeds — loans — bonds.
39-71-2355. Workers' compensation bonds — loans — form — principal and interest.
39-71-2356. Mutually agreeable lump-sum settlements.
39-71-2357 through 39-71-2360 reserved.
39-71-2361. Legislative audit of state fund.
39-71-2362. Authority of legislative auditor with respect to state fund.
39-71-2363. Agency law — submission of budget — annual report.

Part 24 — Mediation

39-71-2401. Disputes — jurisdiction — settlement requirements — mediation.
39-71-2402 through 39-71-2405 reserved.
39-71-2406. Purpose.

39-71-2407. Department authority — rules.
39-71-2408. Mandatory, nonbinding mediation.
39-71-2409. Duties of mediator.
39-71-2410. Limitations on mediation proceedings.
39-71-2411. Mediation procedure.

Part 25 — Employer's Old Fund Liability Tax

39-71-2501. Definitions.
39-71-2502. Findings and purpose.
39-71-2503. Workers' compensation old fund liability tax.
39-71-2504. Workers' compensation tax account.
39-71-2505. Payment of unfunded liability for injuries resulting from accidents occurring before July 1, 1990.

Part 26 — Self-Insurers Guaranty Fund

39-71-2601. Short title.
39-71-2602. Purpose — construction.
39-71-2603. Definitions.
39-71-2604. Board of directors of fund.
39-71-2605 through 39-71-2608 reserved.
39-71-2609. Establishment of fund — employer participation required.
39-71-2610. Rulemaking — powers of fund.
39-71-2611. Duties, liabilities, and rights of fund.
39-71-2612 through 39-71-2614 reserved.
39-71-2615. Initial fee — assessment.
39-71-2616. Reimbursement for obligations paid and assumed.
39-71-2617. Tax exemption.
39-71-2618. Immunity.
39-71-2619. Notification of insolvency by private self-insurer.
39-71-2620. Audit requirement.

Parts 27 and 28 reserved

Part 29 — Workers' Compensation Judge

39-71-2901. Location of office — court powers.
39-71-2902. Operating expenses.
39-71-2903. Administrative procedure act and rules of evidence applicable.
39-71-2904. Direct appeal to supreme court.
39-71-2905. Petition to workers' compensation judge.
39-71-2906. Repealed.
39-71-2907. Increase in award for unreasonable delay or refusal to pay.
39-71-2908. Repealed.
39-71-2909. Authority to review, diminish, or increase awards.
39-71-2910. Stay pending posttrial motions and appeal.
39-71-2911 through 39-71-2913 reserved.
39-71-2914. Signing of petitions, pleadings, motions, and other papers — requirements — sanctions.

Chapter Cross-References

The administration of justice, Art. II, sec. 16, Mont. Const.

Part 1

General Provisions

39-71-101. Short title. This chapter may be cited as the "Workers' Compensation Act".

History: En. Sec. 1, Ch. 96, L. 1915; re-en. Sec. 2816, R.C.M. 1921; re-en. Sec. 2816, R.C.M. 1935; amd. Sec. 29, Ch. 341, L. 1969; amd. Sec. 86, Ch. 23, L. 1975; R.C.M. 1947, 92-101(part); amd. Sec. 51, Ch. 397, L. 1979.

39-71-102. Reference to plans. Whenever compensation plan No. 1, 2, or 3 is referred to, such reference also includes all other sections which are applicable to the subject matter of such reference.

History: En. Sec. 1, Ch. 96, L. 1915; re-en. Sec. 2817, R.C.M. 1921; re-en. Sec. 2817, R.C.M. 1935; R.C.M. 1947, 92-102; amd. Sec. 52, Ch. 397, L. 1979.

Cross-References

Compensation plan No. 1, Title 39, ch. 71, part 21.

Compensation plan No. 2, Title 39, ch. 71, part 22.

Compensation plan No. 3, Title 39, ch. 71, part 23.

39-71-103. Compensation provisions. The compensation provisions of this chapter, whenever referred to, shall be held to include the provisions of compensation plan No. 1, 2, or 3 and all other sections of this chapter applicable to the same or any part thereof.

History: En. Sec. 1, Ch. 96, L. 1915; re-en. Sec. 2818, R.C.M. 1921; re-en. Sec. 2818, R.C.M. 1935; R.C.M. 1947, 92-103.

Cross-References

Compensation plan No. 1, Title 39, ch. 71, part 21.

Compensation plan No. 2, Title 39, ch. 71, part 22.

Compensation plan No. 3, Title 39, ch. 71, part 23.

39-71-104. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 24, Ch. 96, L. 1915; re-en. Sec. 2964, R.C.M. 1921; re-en. Sec. 2964, R.C.M. 1935; R.C.M. 1947, 92-838.

39-71-105. Declaration of public policy. For the purposes of interpreting and applying Title 39, chapters 71 and 72, the following is the public policy of this state:

(1) It is an objective of the Montana workers' compensation system to provide, without regard to fault, wage supplement and medical benefits to a worker suffering from a work-related injury or disease. Wage-loss benefits are not intended to make an injured worker whole; they are intended to assist a worker at a reasonable cost to the employer. Within that limitation, the wage-loss benefit should bear a reasonable relationship to actual wages lost as a result of a work-related injury or disease.

(2) A worker's removal from the work force due to a work-related injury or disease has a negative impact on the worker, the worker's family, the employer, and the general public. Therefore, it is an objective of the workers' compensation system to return a worker to work as soon as possible after the worker has suffered a work-related injury or disease.

(3) Montana's workers' compensation and occupational disease insurance systems are intended to be primarily self-administering. Claimants should be able to speedily obtain benefits, and employers should be able to provide coverage at reasonably constant rates. To meet these objectives, the system must be designed to minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities.

(4) Title 39, chapters 71 and 72, must be construed according to their terms and not liberally in favor of any party.

(5) It is the intent of the legislature that stress claims, often referred to as "mental-mental claims" and "mental-physical claims", are not compensable

under Montana's workers' compensation and occupational disease laws. The legislature recognizes that these claims are difficult to objectively verify and that the claims have a potential to place an economic burden on the workers' compensation and occupational disease system. The legislature also recognizes that there are other states that do not provide compensation for various categories of stress claims and that stress claims have presented economic problems for certain other jurisdictions. In addition, not all injuries are compensable under the present system, as is the case with repetitive injury claims, and it is within the legislature's authority to define the limits of the workers' compensation and occupational disease system.

History: En. Sec. 1, Ch. 464, L. 1987; amd. Sec. 1, Ch. 630, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 630 inserted (5) providing that stress claims are not compensable. Amendment effective May 11, 1993.

39-71-106. No liability for reporting violation. A person, including but not limited to an insurer or an employer, may not be held liable for civil damages as a result of reporting in good faith information that the person believes proves a violation of the provisions of chapter 72 or this chapter.

History: En. Sec. 17, Ch. 619, L. 1993.

Compiler's Comments

Effective Date: Section 30, Ch. 619, L. 1993, provided: "[This act] is effective July 1, 1993."

39-71-107 through 39-71-115 reserved.

39-71-116. Definitions. Unless the context otherwise requires, words and phrases employed in this chapter have the following meanings:

(1) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to:

(a) the investigation, review, and settlement of claims;

(b) payment of benefits;

(c) setting of reserves;

(d) furnishing of services and facilities; and

(e) utilization of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(2) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the department prior to July 1 of each year.

(3) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 22 years who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury if a beneficiary, as defined in subsections (3)(a) through (3)(d), does not exist; and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury but only until the age of 18 years and only when a beneficiary, as defined in subsections (3)(a) through (3)(e), does not exist.

(4) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

(5) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(6) "Construction industry" means the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors, listed in major groups 15 through 17 in the 1987 Standard Industrial Classification Manual. The term does not include office workers, design professionals, salespersons, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site.

(7) "Days" means calendar days, unless otherwise specified.

(8) "Department" means the department of labor and industry.

(9) "Disability" means a condition in which a worker's ability to engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined with factors, such as the worker's age, education, work history, and other factors that affect the worker's ability to engage in gainful employment. Disability does not mean a purely medical condition.

(10) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(11) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

(12) "Invalid" means one who is physically or mentally incapacitated.

(13) "Maintenance care" means treatment designed to provide the optimum state of health while minimizing recurrence of the clinical status.

(14) "Medical stability", "maximum healing", or "maximum medical healing" means a point in the healing process when further material improvement would not be reasonably expected from primary medical treatment.

(15) "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at or decision made by the department.

(16) "Palliative care" means treatment designed to reduce or ease symptoms without curing the underlying cause of the symptoms.

(17) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer has not operated a sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if average payrolls are not available. This estimate must

be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of the current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

(18) "Permanent partial disability" means a condition, after a worker has reached maximum medical healing, in which a worker:

(a) has a medically determined physical restriction as a result of an injury as defined in 39-71-119; and

(b) is able to return to work in some capacity but the physical restriction impairs the worker's ability to work.

(19) "Permanent total disability" means a condition resulting from injury as defined in this chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable prospect of physically performing regular employment. Regular employment means work on a recurring basis performed for remuneration in a trade, business, profession, or other occupation in this state. Lack of immediate job openings is not a factor to be considered in determining if a worker is permanently totally disabled.

(20) The "plant of the employer" includes the place of business of a third person while the employer has access to or control over the place of business for the purpose of carrying on the employer's usual trade, business, or occupation.

(21) "Primary medical services" means treatment prescribed by a treating physician, for conditions resulting from the injury, necessary for achieving medical stability.

(22) "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

(23) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

(24) "Reasonably safe tools and appliances" are tools and appliances as are adapted to and are reasonably safe for use for the particular purpose for which they are furnished.

(25) "Secondary medical services" means those medical services or appliances considered not medically necessary for medical stability. The services and appliances include but are not limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs designed to address disability and not impairment, or equipment offered by individuals, clinics, groups, hospitals, or rehabilitation facilities.

(26) "Temporary partial disability" means a condition resulting from an injury as defined in 39-71-119 in which a worker, prior to maximum healing:

(a) is temporarily unable to return to the position held at the time of injury because of a medically determined physical restriction;

(b) returns to work in a modified or alternative employment; and

(c) suffers a partial wage loss.

(27) "Temporary service contractor" means any person, firm, association, or corporation conducting business that employs individuals directly for the

purpose of furnishing the services of those individuals on a part-time or temporary basis to others.

(28) "Temporary total disability" means a condition resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured worker reaches maximum medical healing.

(29) "Temporary worker" means a worker whose services are furnished to another on a part-time or temporary basis to substitute for a permanent employee on leave or to meet an emergency or short-term workload.

(30) "Treating physician" means a person who is primarily responsible for the treatment of a worker's compensable injury and is:

(a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting privileges to practice in one or more hospitals, if any, in the area where the physician is located;

(b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

(c) a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20, if there is not a physician, as defined in subsection (30)(a), in the area where the physician assistant-certified is located;

(d) an osteopath licensed by the state of Montana under Title 37, chapter 5; or

(e) a dentist licensed by the state of Montana under Title 37, chapter 4.

(31) "Year", unless otherwise specified, means calendar year.

History: Ap. p. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2853, R.C.M. 1921; re-en. Sec. 2853, R.C.M. 1935; Sec. 92-401, R.C.M. 1947; (1)En. 92-423.2 by Sec. 1, Ch. 445, L. 1973; Sec. 92-423.2, R.C.M. 1947; (2)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2865, R.C.M. 1921; amd. Sec. 4, Ch. 121, L. 1925; re-en. Sec. 2865, R.C.M. 1935; amd. Sec. 1, Ch. 92, L. 1969; amd. Sec. 1, Ch. 331, L. 1973; amd. Sec. 1, Ch. 269, L. 1974; amd. Sec. 1, Ch. 46, L. 1975; Sec. 92-413, R.C.M. 1947; (3)Ap. p. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2888, R.C.M. 1921; re-en. Sec. 2888, R.C.M. 1935; Sec. 92-436, R.C.M. 1947; Ap. p. Sec. 12, Ch. 235, L. 1947; Sec. 92-1121.1, R.C.M. 1947; (4)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2869, R.C.M. 1921; re-en. Sec. 2869, R.C.M. 1935; amd. Sec. 2, Ch. 92, L. 1969; Sec. 92-417, R.C.M. 1947; (5)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2878, R.C.M. 1921; re-en. Sec. 2878, R.C.M. 1935; amd. Sec. 7, Ch. 23, L. 1975; Sec. 92-426, R.C.M. 1947; (6), (22)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2885, R.C.M. 1921; re-en. Sec. 2885, R.C.M. 1935; Sec. 92-433, R.C.M. 1947; (7)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2877, R.C.M. 1921; re-en. Sec. 2877, R.C.M. 1935; amd. Sec. 1, Ch. 33, L. 1974; Sec. 92-425, R.C.M. 1947; (8)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2887, R.C.M. 1921; re-en. Sec. 2887, R.C.M. 1935; amd. Sec. 7, Ch. 550, L. 1977; Sec. 92-435, R.C.M. 1947; (9)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2868, R.C.M. 1921; re-en. Sec. 2868, R.C.M. 1935; Sec. 92-416, R.C.M. 1947; (10)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2881, R.C.M. 1921; re-en. Sec. 2881, R.C.M. 1935; amd. Sec. 8, Ch. 23, L. 1975; Sec. 92-429, R.C.M. 1947; (11)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2884, R.C.M. 1921; re-en. Sec. 2884, R.C.M. 1935; amd. Sec. 9, Ch. 23, L. 1975; Sec. 92-432, R.C.M. 1947; (12)En. 92-440 by Sec. 1, Ch. 108, L. 1973; Sec. 92-440, R.C.M. 1947; (13)En. 92-441 by Sec. 1, Ch. 109, L. 1973; Sec. 92-441, R.C.M. 1947; (14)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2873, R.C.M. 1921; re-en. Sec. 2873, R.C.M. 1935; Sec. 92-421, R.C.M. 1947; (15)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2889, R.C.M. 1921; re-en. Sec. 2889, R.C.M. 1935; Sec. 92-437, R.C.M. 1947; (16)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2886, R.C.M. 1921; re-en. Sec. 2886, R.C.M,. 1935; Sec. 92-434, R.C.M. 1947; (17)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2860, R.C.M. 1921; re-en. Sec. 2860, R.C.M. 1935; Sec. 92-408, R.C.M. 1947; (18)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2861, R.C.M. 1921; re-en. Sec. 2861, R.C.M. 1935; Sec. 92-409, R.C.M. 1947; (19)En. 92-439 by Sec. 1, Ch. 107, L. 1973; Sec. 92-439, R.C.M. 1947; (20)En. 92-423.1 by Sec. 1, Ch. 444, L. 1973; Sec. 92-423.1, R.C.M. 1947; (21)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2876, R.C.M. 1921; re-en. Sec. 2876, R.C.M. 1935; Sec. 92-424, R.C.M. 1947; R.C.M. 1947, 92-401, 92-408, 92-409, 92-413, 92-416, 92-417, 92-421, 92-423.1, 92-423.2, 92-424, 92-425, 92-426, 92-429, 92-432, 92-433, 92-434, 92-435, 92-436, 92-437, 92-439, 92-440, 92-441, 92-1121.1(part); amd. Sec. 53,

Ch. 397, L. 1979; amd. Sec. 1, Ch. 47, L. 1981; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 374, L. 1985; amd. Sec. 2, Ch. 464, L. 1987; amd. Sec. 7, Ch. 333, L. 1989; amd. Sec. 13, Ch. 613, L. 1989; amd. Sec. 6, Ch. 4, Sp. L. May 1990; amd. Sec. 1, Ch. 323, L. 1991; amd. Sec. 2, Ch. 480, L. 1991; amd. Sec. 1, Ch. 574, L. 1991; amd. Sec. 1, Ch. 555, L. 1993; amd. Sec. 1, Ch. 619, L. 1993; amd. Sec. 2, Ch. 628, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 555 at end of definition of insurer deleted "or the uninsured employers' fund provided for in part 5 of this chapter"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 619 inserted definition of temporary partial disability; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 628 throughout section, before "healing", inserted "medical"; inserted definitions of disability; maintenance care; medical stability, maximum healing, or maximum medical healing; palliative care; primary medical services; secondary medical services; and treating physician; deleted former definition of maximum healing that read: ""Maximum healing" means the status reached when a worker is as far restored medically as the permanent character of the work-related injury will permit"; deleted definition of physician that read: "The term "physician" includes "surgeon" and in either case means one authorized by law to practice his profession in this state"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Rehabilitation benefits, 39-71-2001.

39-71-117. Employer defined. (1) "Employer" means:

(a) the state and each county, city and county, city school district, irrigation district, all other districts established by law, and all public corporations and quasi-public corporations and public agencies therein and every person, every prime contractor, and every firm, voluntary association, and private corporation, including any public service corporation and including an independent contractor who has any person in service under any appointment or contract of hire, expressed or implied, oral or written, and the legal representative of any deceased employer or the receiver or trustee thereof;

(b) any association, corporation, or organization that seeks permission and meets the requirements set by the department by rule for a group of individual employers to operate as self-insured under plan No. 1 of this chapter; and

(c) any nonprofit association or corporation or other entity funded in whole or in part by federal, state, or local government funds that places community service participants, as defined in 39-71-118(1)(f), with nonprofit organizations or associations or federal, state, or local government entities.

(2) A temporary service contractor is the employer of a temporary worker for premium and loss experience purposes.

(3) An employer defined in subsection (1) who utilizes the services of a worker furnished by another person, association, contractor, firm, or corporation, other than a temporary service contractor, is presumed to be the employer for workers' compensation premium and loss experience purposes for work performed by the worker. The presumption may be rebutted by substantial credible evidence of the following:

(a) the person, association, contractor, firm, or corporation, other than a temporary service contractor, furnishing the services of a worker to another retains control over all aspects of the work performed by the worker, both at the inception of employment and during all phases of the work; and

(b) the person, association, contractor, firm, or corporation, other than a temporary service contractor, furnishing the services of a worker to another has obtained workers' compensation insurance for the worker in Montana both at the inception of employment and during all phases of the work performed.

(4) Notwithstanding the provisions of subsection (3), an interstate or intrastate common or contract motor carrier doing business in this state who utilizes drivers in this state is considered the employer, is liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:

(a) the driver in this state is certified as an independent contractor as provided in 39-71-401(3); or

(b) the person, association, contractor, firm, or corporation furnishing drivers in this state to a motor carrier has obtained workers' compensation insurance on the drivers in Montana both at the inception of employment and during all phases of the work performed.

History: En. 92-410.1 by Sec. 1, Ch. 154, L. 1973; R.C.M. 1947, 92-410.1(part); amd. Sec. 1, Ch. 480, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 2, Ch. 323, L. 1991; amd. Sec. 1, Ch. 813, L. 1991; amd. Sec. 1, Ch. 458, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 458 in (4), before "common", inserted "interstate or intrastate"; and made minor changes in style. Amendment effective April 21, 1993.

39-71-118. Employee, worker, and volunteer firefighter defined. (1) The terms "employee" or "worker" means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for the corporations for pay. Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

(b) any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs as outlined in this subsection while they are on the premises of a public school or community college.

(d) students enrolled and in attendance in programs of vocational-technical education at designated vocational-technical centers;

(e) an aircrew member or other person employed as a volunteer under 67-2-105;

(f) a person, other than a juvenile as defined in subsection (1)(b), performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (f):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(g) an inmate working in a federally certified prison industries program authorized under 53-1-301.

(2) The terms defined in subsection (1) do not include a person who is:

(a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment; or

(b) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities.

(3) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a fire company organized and funded by a county, a rural fire district, or a fire service area.

(4) (a) If the employer is a partnership or sole proprietorship, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership or the owner of the sole proprietorship devoting full time to the partnership or proprietorship business.

(b) In the event of an election, the employer must serve upon the employer's insurer written notice naming the partners or sole proprietor to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (4)(d). A partner or sole proprietor is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the electing employer may elect not less than $900 a month and not more than 1 1/2 times the average weekly wage as defined in this chapter.

(5) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' com-

pensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

(6) An employee or worker in this state whose services are furnished by a person, association, contractor, firm, or corporation, other than a temporary service contractor, to an employer as defined in 39-71-117 is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

(7) For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or

(d) a nonresident of Montana who does not meet the requirements of subsection (7)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

(8) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (7)(b) or (7)(d) as a condition of approving the election under subsection (7)(d).

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2863, R.C.M. 1921; amd. Sec. 3, Ch. 121, L. 1925; amd. Sec. 1, Ch. 139, L. 1931; re-en. Sec. 2863, R.C.M. 1935; amd. Sec. 3, Ch. 88, L. 1945; amd. Sec. 1, Ch. 153, L. 1963; amd. Sec. 1, Ch. 308, L. 1971; amd. Sec. 1, Ch. 44, L. 1975; amd. Sec. 1, Ch. 281, L. 1977; R.C.M. 1947, 92-411; amd. Sec. 1, Ch. 21, L. 1981; amd. Sec. 2, Ch. 336, L. 1985; amd. Sec. 20, Ch. 670, L. 1985; amd. Sec. 96, Ch. 370, L. 1987; amd. Sec. 67, Ch. 464, L. 1987; amd. Sec. 25, Ch. 658, L. 1987; amd. Sec. 11, Ch. 333, L. 1989; amd. Sec. 1, Ch. 129, L. 1991; amd. Sec. 3, Ch. 323, L. 1991; amd. Sec. 2, Ch. 813, L. 1991; amd. Sec. 1, Ch. 154, L. 1993; amd. Sec. 8, Ch. 279, L. 1993; amd. Sec. 2, Ch. 458, L. 1993; amd. Sec. 1, Ch. 471, L. 1993; amd. Sec. 6, Ch. 561, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 154 inserted (2) clarifying that a person injured while participating in a recreational activity or while performing voluntary service at a recreational facility is not entitled to workers' compensation; and made minor changes in style.

Chapter 279 substituted reference to aircrew for reference to airman.

Chapter 458 in (1), (6), and (7), after "employee", deleted "workman"; inserted (7)(c) to include nonresident construction workers; inserted (7)(d) to include certain nonresident employees whose employer elects coverage with an insurer that allows certain elections; inserted (8) allowing an insurer to require coverage for certain nonresident employees who do not meet the statutory requirements as a condition of approving the election; and made minor changes in style. Amendment effective April 21, 1993.

Chapter 471 inserted (1)(g) relating to prison inmates; and made minor changes in style.

Chapter 561 in (1), (6), and (7), after "employee", deleted "workman"; at beginning of (1)(b) deleted "a recipient of general relief who is performing work for a county of this state under the provisions of 53-3-303 through 53-3-305 and"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

"Independent contractor" defined, 39-71-120.

39-71-119. Injury and accident defined. (1) "Injury" or "injured" means:

(a) internal or external physical harm to the body;

(b) damage to prosthetic devices or appliances, except for damage to eyeglasses, contact lenses, dentures, or hearing aids; or

(c) death.

(2) An injury is caused by an accident. An accident is:

(a) an unexpected traumatic incident or unusual strain;

(b) identifiable by time and place of occurrence;

(c) identifiable by member or part of the body affected; and

(d) caused by a specific event on a single day or during a single work shift.

(3) "Injury" or "injured" does not mean a physical or mental condition arising from:

(a) emotional or mental stress; or

(b) a nonphysical stimulus or activity.

(4) "Injury" or "injured" does not include a disease that is not caused by an accident.

(5) A cardiovascular, pulmonary, respiratory, or other disease, cerebrovascular accident, or myocardial infarction suffered by a worker is an injury only if the accident is the primary cause of the physical harm in relation to other factors contributing to the physical harm.

History: Ap. p. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2870, R.C.M. 1921; re-en. Sec. 2870, R.C.M. 1935; amd. Sec. 6, Ch. 162, L. 1961; amd. Sec. 6, Ch. 149, L. 1965; amd. Sec. 1, Ch. 270, L. 1967; amd. Sec. 1, Ch. 488, L. 1973; Sec. 92-418, R.C.M. 1947; Ap. p. Sec. 2, Ch. 488, L. 1973; Sec. 92-418.1, R.C.M. 1947; (3)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2864, R.C.M. 1921; re-en. Sec. 2864, R.C.M. 1935; Sec. 92-412, R.C.M. 1947; R.C.M. 1947, 92-412, 92-418, 92-418.1; amd. Sec. 3, Ch. 464, L. 1987.

39-71-120. Independent contractor defined. (1) An "independent contractor" is one who renders service in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under his contract and in fact; and

(b) is engaged in an independently established trade, occupation, profession, or business.

(2) An individual performing services for remuneration is considered to be an employee under this chapter unless the requirements of subsection (1) are met.

History: En. 92-438.1 by Sec. 1, Ch. 251, L. 1973; R.C.M. 1947, 92-438.1; amd. Sec. 5, Ch. 314, L. 1987.

39-71-121. Repealed. Sec. 68, Ch. 464, L. 1987.
History: En. Sec. 2, Ch. 47, L. 1981.

39-71-122. Repealed. Sec. 68, Ch. 464, L. 1987.
History: En. Sec. 3, Ch. 47, L. 1981.

39-71-123. Wages defined. (1) "Wages" means the gross remuneration paid in money, or in a substitute for money, for services rendered by an employee, or income provided for in subsection (1)(d). Wages include but are not limited to:

(a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays, vacations, and sickness periods;

(b) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based on its actual value;

(c) payments made to an employee on any basis other than time worked, including but not limited to piecework, an incentive plan, or profit-sharing arrangement; and

(d) income or payment in the form of a draw, wage, net profit, or substitute for money received or taken by a sole proprietor or partner, regardless of whether the sole proprietor or partner has performed work or provided services for that remuneration.

(2) Wages do not include:

(a) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, and other expenses, as set forth in department rules;

(b) special rewards for individual invention or discovery;

(c) tips and other gratuities received by the employee in excess of those documented to the employer for tax purposes;

(d) contributions made by the employer to a group insurance or pension plan; or

(e) vacation or sick leave benefits accrued but not paid.

(3) For compensation benefit purposes, the average actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except if:

(a) the term of employment for the same employer is less than four pay periods, in which case the employee's wages are the hourly rate times the number of hours in a week for which the employee was hired to work; or

(b) for good cause shown by the claimant, the use of the four pay periods does not accurately reflect the claimant's employment history with the employer, in which case the insurer may use additional pay periods.

(4) (a) For the purpose of calculating compensation benefits for an employee working concurrent employments, the average actual wages must be calculated as provided in subsection (3).

(b) The compensation benefits for a covered volunteer must be based on the average actual wages in the volunteer's regular employment, except self-employment as a sole proprietor or partner who elected not to be covered, from which the volunteer is disabled by the injury incurred.

(c) The compensation benefits for an employee working at two or more concurrent remunerated employments must be based on the aggregate of average actual wages of all employments, except self-employment as a sole proprietor or partner who elected not to be covered, from which the employee is disabled by the injury incurred.

(5) The compensation benefits and the payroll, for premium purposes, for a volunteer firefighter covered pursuant to 39-71-118 must be based upon a wage of not less than $900 a month and not more than 1 ½ times the average weekly wage as defined in this chapter.

History: En. Sec. 4, Ch. 464, L. 1987; amd. Sec. 12, Ch. 333, L. 1989; amd. Sec. 2, Ch. 129, L. 1991; amd. Sec. 2, Ch. 261, L. 1991; amd. Sec. 2, Ch. 154, L. 1993; amd. Sec. 23, Ch. 619, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 154 in (5) substituted "39-71-118" for "39-71-118(4)"; and made minor changes in style.

Chapter 619 in (1), after "employee", inserted "or income provided for in subsection (1)(d)"; inserted (1)(d) relating to wages, including income or payment in draw, wage, net profit, or money substitute received or taken by sole proprietor or partner; and made minor changes in style. Amendment effective July 1, 1993.

Part 2
Administrative Provisions

39-71-201. Administration fund. (1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the various occupational safety acts the department must administer, with the exception of the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers' fund, are to be paid upon lawful appropriation. The following money collected by the department must be deposited in the state treasury to the credit of the workers' compensation administrative fund and must be used for the administrative expenses of the department:

(a) all fees and penalties provided in 39-71-205 and 39-71-304;

(b) all fees paid for inspection of boilers and issuance of licenses to operating engineers as required by law;

(c) all fees paid from an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund. The assessments must be levied against the preceding calendar year's gross annual payroll of the plan No. 1 employers and the gross annual direct premiums collected in Montana on the policies of the plan No. 2 insurers, insuring employers covered under the chapter, during the preceding calendar year. However, an assessment of the plan No. 1 employer or plan No. 2 insurer may not be less than $200. If at any time during the fiscal year a plan No. 1 employer is granted permission to self-insure or a plan No. 2 insurer is authorized to insure employers under this chapter, that plan No. 1 employer or plan No. 2 insurer is subject to assessment. The assessments must be sufficient to fund the direct costs identified to the three plans and an equitable portion of the indirect costs based on the ratio of the preceding fiscal year's indirect costs distributed to the plans, using proper accounting and cost allocation procedures. Plan No. 3 must be assessed an amount sufficient to fund the direct costs and an equitable portion of the indirect costs of regulating plan No. 3. Other sources of revenue, including unexpended funds from the preceding fiscal year, must be used to reduce the costs before levying the assessments.

(2) The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, as amended, incurred while on the business of the department either within or without the state.

(3) Disbursements from the administration money must be made after being approved by the department upon claim therefor.

History: En. 92-116.1 by Sec. 1, Ch. 253, L. 1973; amd. Sec. 1, Ch. 318, L. 1975; amd. Sec. 28, Ch. 453, L. 1977; R.C.M. 1947, 92-116.1; amd. Sec. 18, Ch. 104, L. 1979; amd. Sec. 28, Ch. 557, L. 1987; amd. Sec. 14, Ch. 613, L. 1989; amd. Sec. 2, Ch. 558, L. 1991; amd. Sec. 2, Ch. 555, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 555 near middle of (1), after "administer", inserted "with the exception of the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers' fund"; inserted fourth sentence of (1)(c) that read: "If at any time during the fiscal year a plan No. 1 employer is granted permission to self-insure or a plan No. 2 insurer is authorized to insure employers under this chapter, that plan No. 1 employer or plan No. 2 insurer is subject to assessment"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

"Division" defined, 39-71-116.

"Insurer" defined, 39-71-116.

"Payroll" defined, 39-71-116.

"Year" defined, 39-71-116.

"Employer" defined, 39-71-117.

Compensation plan No. 1, Title 39, ch. 71, part 21.

Compensation plan No. 2, Title 39, ch. 71, part 22.

Compensation plan No. 3, Title 39, ch. 71, part 23.

39-71-202. Office of department. The department shall keep its principal office in the capital of the state. It may rent or lease quarters for the conduct of its administrative duties.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2826, R.C.M. 1921; re-en. Sec. 2826, R.C.M. 1935; amd. Sec. 1, Ch. 234, L. 1969; amd. Sec. 1, Ch. 23, L. 1975; R.C.M. 1947, 92-111; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

"Division" defined, 39-71-116.

39-71-203. Powers of department — rules. (1) The department is hereby vested with full power, authority, and jurisdiction to do and perform any and all things that are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under this chapter.

(2) The department may adopt rules to carry out the provisions of this chapter.

History: En. Sec. 18, Ch. 96, L. 1915; re-en. Sec. 2940, R.C.M. 1921; re-en. Sec. 2940, R.C.M. 1935; amd. Sec. 26, Ch. 23, L. 1975; R.C.M. 1947, 92-814; amd. Sec. 5, Ch. 464, L. 1987; amd. Sec. 1, Ch. 525, L. 1987; amd. Sec. 15, Ch. 613, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

"Division" defined, 39-71-116.

39-71-204. Rescission, alteration, or amendment by department of its orders, decisions, or awards — effect — appeal. (1) The department has continuing jurisdiction over all its orders, decisions, and awards and may, at any time, upon notice, and after opportunity to be heard is given to the parties in interest, rescind, alter, or amend any such order, decision, or award made by it upon good cause appearing therefor.

(2) Any order, decision, or award rescinding, altering, or amending a prior order, decision, or award has the same effect as original orders or awards.

(3) If a party is aggrieved by a department order, the party may appeal the dispute to the workers' compensation judge.

History: En. Sec. 20, Ch. 96, L. 1915; re-en. Sec. 2952, R.C.M. 1921; amd. Sec. 9, Ch. 177, L. 1929; re-en. Sec. 2952, R.C.M. 1935; amd. Sec. 1, Ch. 67, L. 1937; amd. Sec. 40, Ch. 23, L. 1975; R.C.M. 1947, 92-826; amd. Sec. 1, Ch. 63, L. 1979; amd. Sec. 6, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

"Division" defined, 39-71-116.

"Insurer" defined, 39-71-116.

"Order" defined, 39-71-116.

39-71-205. Department authorized to charge certain fees — disposition of. (1) The department shall have power and authority to charge and collect a fee for copies of papers and records, including certified copies of documents and orders filed in its office, sufficient to recover the cost of the material and the time expended, as fixed by the department.

(2) The department shall have power and authority to fix and collect reasonable charges for publications issued under its authority.

(3) The fees charged and collected under this section shall be paid monthly into the treasury of the state to the credit of the state special revenue fund and shall be accompanied by detailed statement thereof.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2834, R.C.M. 1921; re-en. Sec. 2834, R.C.M. 1935; amd. Sec. 165, Ch. 147, L. 1963; amd. Sec. 4, Ch. 23, L. 1975; R.C.M. 1947, 92-119; amd. Sec. 2, Ch. 21, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

"Division" defined, 39-71-116.

39-71-206. Legal advisers of department and state fund — investigative and prosecution services. (1) The attorney general is the legal adviser of the department and the state fund and shall represent either entity in all proceedings if requested by the department or state fund. The department and state fund may employ other attorneys or legal advisers as they consider necessary.

(2) As provided in 2-15-2015, the attorney general shall provide investigative and prosecution services to the state fund with respect to violations of Title 39, chapters 71 and 72.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2835, R.C.M. 1921; re-en. Sec. 2835, R.C.M. 1935; amd. Sec. 1, Ch. 162, L. 1937; amd. Sec. 174, Ch. 147, L. 1963; amd. Sec. 5, Ch. 23, L. 1975; R.C.M. 1947, 92-120; amd. Sec. 1, Ch. 283, L. 1983; amd. Sec. 16, Ch. 613, L. 1989; amd. Sec. 2, Ch. 296, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 296 inserted (2) requiring the Attorney General to provide certain services to the State Fund. Amendment effective July 1, 1993.

Cross-References

"Division" defined, 39-71-116.

Compensation plan No. 3, Title 39, ch. 71, part 23.

39-71-207. Repealed. Sec. 4, Ch. 239, L. 1989.

History: En. 92-121 by Sec. 1, Ch. 332, L. 1973; R.C.M. 1947, 92-121; amd. Sec. 51, Ch. 613, L. 1989.

39-71-208. Blank forms, minutes, and records. The department shall cause to be printed such blank forms as it considers necessary to facilitate or promote the efficient administration of this chapter. It shall provide a record of all awards made by the department and such other books or records as it considers necessary for the purpose and efficient administration of this chapter. All such records are to be kept in the office of the department.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2832, R.C.M. 1921; re-en. Sec. 2832, R.C.M. 1935; amd. Sec. 2, Ch. 23, L. 1975; R.C.M. 1947, 92-117; amd. Sec. 1, Ch. 103, L. 1979; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

"Division" defined, 39-71-116.

39-71-209. Publication of reports and bulletins authorized. The department shall have the power and authority to publish and distribute at its discretion from time to time such further reports and bulletins covering its operations, proceedings, and matters relative to its work as it may deem advisable.

History: **En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2833, R.C.M. 1921; re-en. Sec. 2833, R.C.M. 1935; amd. Sec. 41, Ch. 93, L. 1969; amd. Sec. 3, Ch. 23, L. 1975; R.C.M. 1947, 92-118; amd. Sec. 12, Ch. 125, L. 1983; amd. Sec. 64, Ch. 613, L. 1989.**

Cross-References

"Division" defined, 39-71-116.

39-71-210. Repealed. Sec. 3, Ch. 370, L. 1989.

History: **En. Sec. 25, Ch. 96, L. 1915; re-en. Sec. 2968, R.C.M. 1921; re-en. Sec. 2968, R.C.M. 1935; amd. Sec. 50, Ch. 23, L. 1975; R.C.M. 1947, 92-842; amd. Sec. 2, Ch. 103, L. 1979; amd. Sec. 64, Ch. 613, L. 1989.**

39-71-211. Fraud detection and prevention unit — expenditure accounting. (1) The state fund shall establish a fraud prevention and detection unit. The unit is responsible for developing detection and prevention procedures, providing detection services, and providing training in the prevention and detection of fraudulent conduct under Title 39, chapters 71 and 72, that is subject to prosecution under Title 45. The unit shall refer all cases of suspected fraudulent conduct to the workers' compensation fraud investigation and prosecution office established in 2-15-2015.

(2) The state fund shall expend money to investigate fraud pursuant to this section and shall separately account for money expended.

History: **En. Sec. 3, Ch. 296, L. 1993.**

Compiler's Comments

Effective Date: Section 9, Ch. 296, L. 1993, provided: "[This act] is effective July 1, 1993."

39-71-212 through 39-71-220 reserved.

39-71-221. Public records of department — right to inspect. Each person has a right to inspect any public record of the department, except as otherwise expressly provided by law. For the purposes of 39-71-221 through 39-71-224, "public record" means any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by a public body regardless of physical form or characteristics.

History: **En. 92-844 by Sec. 1, Ch. 25, L. 1975; R.C.M. 1947, 92-844; amd. Sec. 64, Ch. 613, L. 1989.**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public participation in governmental operations, Title 2, ch. 3.

"Division" defined, 39-71-116.

39-71-222. Duties of department regarding inspection and examination of records. The department shall furnish proper and reasonable opportunities for inspection and examination of the records under its control and reasonable facilities for making memoranda or abstracts therefrom during the usual business hours to all persons having occasion to examine them. The department may make reasonable rules necessary for the protection of the records and necessary to prevent interference with the regular discharge of its duties.

History: **En. 92-845 by Sec. 2, Ch. 25, L. 1975; R.C.M. 1947, 92-845; amd. Sec. 64, Ch. 613, L. 1989.**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public participation in governmental operations, Title 2, ch. 3.

Adoption and publication of rules, Title 2, ch. 4, part 3.

"Division" defined, 39-71-116.

39-71-223. Certified copies of public records — fees. (1) The department shall, on demand, furnish a certified copy of any public record to a person who has a right to inspect it, if the record is of a nature permitting such copying, or shall furnish reasonable opportunity to inspect or copy.

(2) The department may establish fees reasonably calculated to reimburse the department for its actual cost in making such records available.

History: En. 92-846 by Sec. 3, Ch. 25, L. 1975; R.C.M. 1947, 92-846; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public participation in governmental operations, Title 2, ch. 3.

Adoption and publication of rules, Title 2, ch. 4, part 3.

"Division" defined, 39-71-116.

39-71-224. Records exempt from disclosure — separation of exempt material from nonexempt. (1) In assuring that the right of individual privacy so essential to the well-being of a free society shall not be infringed without the showing of a compelling state interest, the following public records of the department are exempt from disclosure:

(a) information of a personal nature such as personal, medical, or similar information if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

(b) any public records or information, the disclosure of which is prohibited by federal law or regulations.

(2) If any public record of the department contains material which is not exempt under subsection (1) of this section, as well as material which is exempt from disclosure, the department shall separate the exempt and nonexempt and make the nonexempt material available for examination.

History: En. 92-847 by Sec. 4, Ch. 25, L. 1975; R.C.M. 1947, 92-847; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

"Division" defined, 39-71-116.

39-71-225. Workers' compensation data base system. (1) The department shall develop a workers' compensation data base system to generate management information about Montana's workers' compensation system. The data base system must be used to collect and compile information from insurers, employers, medical providers, claimants, adjusters, rehabilitation providers, and the legal profession. Data collected must be used to provide management information to the legislative and executive branches for the purpose of making policy and management decisions, including but not limited to:

(a) performance information to enable the state to enact remedial efforts to ensure quality, control abuse, and enhance cost control;

(b) information on medical, indemnity, and rehabilitation costs, utilization, and trends; and

(c) information on litigation and attorney involvement for the purpose of identifying trends, problem areas, and the costs of legal involvement.

(2) The department is authorized to collect from insurers, employers, medical providers, the legal profession, and others the information necessary to generate the workers' compensation data base system.

(3) The workers' compensation data base system must be designed in accordance with the following principles:

(a) avoidance of duplication and inconsistency;

(b) reasonable availability of data elements;

(c) value of information collected to be commensurate with the cost of retrieving the collected information;

(d) uniformity to permit efficiency of collection and to allow interstate comparisons;

(e) a workable mechanism to ensure the accuracy of the data collected and to protect the confidentiality of collected data;

(f) reasonable availability of the data at a fair cost to the user;

(g) a broad application to plan No. 1, plan No. 2, and plan No. 3 insurers;

(h) compatibility with electronic data reporting;

(i) reporting procedures that can be handled through private data collection systems that adhere to the provisions of subsections (3)(a) through (3)(h);

(j) implementation of reporting requirements that allow reasonable lead time for compliance.

(4) (a) The department shall take all steps necessary to have the workers' compensation data base system fully operational by July 1, 1995.

(b) After the workers' compensation data base system is operational, the department shall publish an annual report and may publish quarterly reports on the information compiled.

History: En. Sec. 1, Ch. 512, L. 1993.

Compiler's Comments

Effective Date: Section 3, Ch. 512, L. 1993, provided: "[This act] is effective on passage and approval." Approved April 24, 1993.

39-71-226. Claims expenditures codes. The state fund shall continually review its claims expenditure coding structure to separately account for claims and administrative expenses. If a review demonstrates a compelling need for expenditure information that is not available, the state fund shall expand or modify its claims expenditure coding structure.

History: En. Sec. 20, Ch. 555, L. 1993.

Compiler's Comments

Effective Date: Section 23, Ch. 555, L. 1993, provided: "[This act] is effective July 1, 1993."

Part 3

Miscellaneous Provisions

39-71-301. Certificates and certified copies as evidence. (1) Copies of official documents and orders filed or deposited according to law in the office of the department, certified to by a member of the department or by the secretary under the official seal of the department to be true copies of the original, shall be evidence in like manner as the originals.

(2) In any court proceeding wherein the question as to whether or not an employer or employee has complied with and is operating under or bound by the provisions of the Workers' Compensation Act of the state of Montana is a question for determination, a certificate by a member of the department, or by the secretary under the official seal of the department, certifying that such employer or employee has or has not complied with and is or is not operating under and is or is not bound by the provisions of the Workers' Compensation Act of the state of Montana shall be prima facie evidence thereof.

History: En. Sec. 18, Ch. 96, L. 1915; re-en. Sec. 2944, R.C.M. 1921; amd. Sec. 8, Ch. 177, L. 1929; re-en. Sec. 2944, R.C.M. 1935; amd. Sec. 31, Ch. 23, L. 1975; R.C.M. 1947, 92-818; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Suspension of license for violation of certain labor laws, 18-2-432.

M.R.App.P., Title 25, ch. 21.

Requirement of original, Rule 1002, Montana Rules of Evidence (see Title 26, ch. 10).

Public records, Rule 1005, Montana Rules of Evidence (see Title 26, ch. 10).

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

"Division" defined, 39-71-116.

"Employer" defined, 39-71-117.

"Employee" defined, 39-71-118.

39-71-302. What included in computing payroll. In computing the payroll, all wages, as defined in 39-71-123, received by every worker employed under this chapter are included, whether in the form of salary, wage, piecework, or otherwise and whether payable in money, board, or otherwise.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3009, R.C.M. 1921; re-en. Sec. 3009, R.C.M. 1935; amd. Sec. 11, Ch. 235, L. 1947; amd. Sec. 1, Ch. 146, L. 1971; amd. Sec. 5, Ch. 443, L. 1973; R.C.M. 1947, 92-1121; amd. Sec. 54, Ch. 397, L. 1979; amd. Sec. 8, Ch. 333, L. 1989.

Cross-References

"Payroll" defined, 39-71-116.

"Worker" defined, 39-71-118.

39-71-303. Work paid for in property other than money — wages to be determined by department. Where any employer procures any work to be done, payment for which is to be made in property other than money or its equivalent and the value of which property is speculative or intangible, the wages of the employees receiving such compensation shall be determined by the department in accordance with the going wage for the same or similar work in the district or locality where the same is to be performed.

History: En. Sec. 11, Ch. 96, L. 1915; re-en. Sec. 2904, R.C.M. 1921; re-en. Sec. 2904, R.C.M. 1935; amd. Sec. 14, Ch. 23, L. 1975; R.C.M. 1947, 92-607(part); amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

"Division" defined, 39-71-116.

"Wages" defined, 39-71-116.

"Employer" defined, 39-71-117.

39-71-304. Books, records, and payrolls to be open to inspection — penalty for refusal — subpoenas. (1) The books, records, and payrolls of an employer pertinent to the administration of this chapter must always be open to inspection by the department or any duly authorized employee thereof for the purpose of ascertaining the correctness of the payroll, the number of workers employed, and such other information as may be necessary for the department and its management under this chapter. Refusal on the part of an employer to submit the books, records, and payrolls for such inspection shall subject the offending employer to a penalty not exceeding $500 for each offense, to be collected through a civil action in the name of the state and paid into the state treasury.

(2) In addition to the remedy provided in subsection (1), the department may issue subpoenas and compel testimony for the production of evidence, including books, records, papers, documents, and other objects as may be necessary and proper in regard to any investigation or proceeding under this chapter. In the case of disobedience of a subpoena issued and served or the refusal of a witness to testify as to any matter for which the witness may be interrogated in a proceeding before the department, the department may apply to a district court for an order to compel compliance with the subpoena or testimony. Disobedience of the court's order constitutes contempt of court.

History: En. Sec. 19, Ch. 96, L. 1915; re-en. Sec. 2946, R.C.M. 1921; re-en. Sec. 2946, R.C.M. 1935; amd. Sec. 166, Ch. 147, L. 1963; amd. Sec. 33, Ch. 23, L. 1975; R.C.M. 1947, 92-820; amd. Sec. 3, Ch. 103, L. 1979; amd. Sec. 55, Ch. 397, L. 1979; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 3, Ch. 555, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 555 inserted (2) regarding Department's subpoena power. Amendment effective July 1, 1993.

Cross-References

"Division" defined, 39-71-116.
"Payroll" defined, 39-71-116.
"Employer" defined, 39-71-117.
"Employee" defined, 39-71-118.

39-71-305. Repealed. Sec. 16, Ch. 103, L. 1979.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2930, R.C.M. 1921; re-en. Sec. 2930, R.C.M. 1935; amd. Sec. 20, Ch. 23, L. 1975; R.C.M. 1947, 92-804.

39-71-306. Insurers to file summary reports of benefits paid for injuries and statements of medical expenditures. Every insurer shall, on or before the 15th day after each state government fiscal quarter, file with the department:

(1) summary reports of benefits for all compensation payments made during the previous state fiscal quarter to injured workers or their beneficiaries or dependents; and

(2) statements showing the amounts expended during the previous state fiscal quarter for all medical services for injured workers.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2932, R.C.M. 1921; re-en. Sec. 2932, R.C.M. 1935; amd. Sec. 21, Ch. 23, L. 1975; R.C.M. 1947, 92-806; amd. Sec. 56, Ch. 397, L. 1979; amd. Sec. 17, Ch. 613, L. 1989; amd. Sec. 3, Ch. 558, L. 1991.

Cross-References

"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.
"Employer" defined, 39-71-117.
Compensation plan No. 1, Title 39, ch. 71, part 21.
Compensation plan No. 2, Title 39, ch. 71, part 22.

39-71-307. Employers and insurers to file reports of accidents — penalty. (1) Every employer and every insurer is required to file with the department, under department rules, a full and complete report of every accident to an employee arising out of or in the course of employment and resulting in loss of life or injury to the employee. The reports must be furnished to the department in the form and detail as the department prescribes and must provide specific answers to all questions required by the department under its rules. However, if an employer is unable to answer a question, the employer shall state the reason for the employer's inability to answer.

(2) Every insurer transacting business under this chapter shall, at the time and in the manner prescribed by the department, make and file with the department the reports of accidents as the department requires.

(3) An employer, insurer, or adjuster who refuses or neglects to submit to the department reports necessary for the proper filing and review of a claim, as provided in subsection (1), shall be assessed a penalty of not less than $200 or more than $500 for each offense. The department shall assess and collect the penalty. An insurer may contest a penalty assessment in a hearing conducted according to department rules.

History: (1)En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2934, R.C.M. 1921; re-en. Sec. 2934, R.C.M. 1935; amd. Sec. 22, Ch. 23, L. 1975; Sec. 92-808, R.C.M. 1947; (2)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2987, R.C.M. 1921; re-en. Sec. 2987, R.C.M. 1935; amd. Sec. 64, Ch. 23, L. 1975; Sec. 92-1010, R.C.M. 1947; R.C.M. 1947, 92-808, 92-1010; amd. Sec. 14, Ch. 333, L. 1989; amd. Secs. 18, 64, Ch. 613, L. 1989; amd. Sec. 2, Ch. 619, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 619 in (3), in first sentence after "proper", inserted "filing and" and after "(1)", substituted "shall" for "may"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

"Division" defined, 39-71-116.

"Insurer" defined, 39-71-116.

"Employer" defined, 39-71-117.

"Employee" defined, 39-71-118.

"Injury" defined, 39-71-119.

39-71-308. Neglect or refusal of public corporation to file payroll reports — arbitrary assessment by department. If a public corporation insured by the state fund neglects or refuses to file prescribed payroll reports of its employees, the department may levy an arbitrary assessment upon the public corporation in an amount of $75 for each assessment. The assessment must be collected in the manner provided in this chapter for the collection of assessments.

History: En. Sec. 3, Ch. 96, L. 1915; amd. Sec. 1, Ch. 100, L. 1919; amd. Sec. 1, Ch. 196, L. 1921; re-en. Sec. 2840, R.C.M. 1921; re-en. Sec. 2840, R.C.M. 1935; amd. Sec. 1, Ch. 410, L. 1971; amd. Sec. 6, Ch. 23, L. 1975; R.C.M. 1947, 92-206(part); amd. Sec. 3, Ch. 21, L. 1981; amd. Sec. 19, Ch. 613, L. 1989.

Cross-References

"Division" defined, 39-71-116.

"Payroll" defined, 39-71-116.

"Public corporation" defined, 39-71-116.

39-71-309. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. 92-706.1 by Sec. 1, Ch. 252, L. 1973; amd. Sec. 1, Ch. 43, L. 1975; amd. Sec. 1, Ch. 189, L. 1975; R.C.M. 1947, 92-706.1(2); amd. Sec. 57, Ch. 397, L. 1979.

39-71-310 through 39-71-314 reserved.

39-71-315. Prohibited actions — penalty. (1) The following actions by a medical provider constitute violations and are subject to the penalty in subsection (2):

(a) failing to document, under oath, the provision of the services or treatment for which compensation is claimed under chapter 72 or this chapter; or

(b) referring a worker for treatment or diagnosis of an injury or illness that is compensable under chapter 72 or this chapter to a facility owned wholly or in part by the provider, unless the provider informs the worker of the ownership interest and provides the name and address of alternate facilities, if any exist.

(2) A person who violates this section may be assessed a penalty of not less than $200 or more than $500 for each offense. The department shall assess and collect the penalty.

History: En. Sec. 16, Ch. 619, L. 1993.

Compiler's Comments

Effective Date: Section 30, Ch. 619, L. 1993, provided: "[This act] is effective July 1, 1993."

39-71-316. Filing true claim — obtaining benefits through deception or other fraudulent means. (1) A person filing a claim under this chapter or chapter 72 of this title, by signing the claim, affirms the information filed is true and correct to the best of that person's knowledge.

(2) (a) A person who obtains or assists in obtaining benefits to which the person is not entitled or who obtains or assists another person in obtaining benefits to which the other person is not entitled under this chapter or chapter 72 of this title is guilty of theft and may be prosecuted under 45-6-301. A county attorney or the attorney general may initiate criminal proceedings against the person. This subsection includes but is not limited to a person who is receiving temporary total disability benefits, permanent total disability benefits, or rehabilitation benefits while working without the knowledge and concurrence of the insurer.

(b) As used in subsection (2)(a), "person" includes but is not limited to an employee, employer, insurer, or medical service provider.

(3) (a) The department may require a person convicted of theft under 45-6-301(5) to pay to the department an amount equal to 10 times the amount paid by an insurer on the false claim, provided that the amount does not exceed $50,000. If upon demand of the department the person refuses to pay the fine, the department may institute suit to collect the money owed.

(b) The department shall:

(i) use the money collected pursuant to subsection (3)(a) to administer and enforce the provisions of this section; and

(ii) forward any surplus money to the department of justice. The forwarded money must be used exclusively for the staffing and operation of the workers' compensation fraud investigation and prosecution office established in 2-15-2015.

(c) This section does not limit an insurer's civil remedies to collect for money paid to a person convicted under 45-6-301(5).

(4) A person licensed under the provisions of Title 37 is subject to suspension, revocation, or denial of a license if the person knowingly claims or assists in the claiming of benefits in violation of the provisions of chapter 72 or this chapter.

History: En. Sec. 7, Ch. 464, L. 1987; amd. Sec. 4, Ch. 296, L. 1993; amd. Sec. 1, Ch. 618, L. 1993; amd. Sec. 9, Ch. 619, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 296 in first sentence of (2)(a), after "theft", inserted "and may be prosecuted", in second sentence, after "county attorney", inserted "or the attorney general", and inserted third sentence applying criminal liability to persons receiving enumerated benefits; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 618 in (2)(a), before "under", inserted "or who obtains or assists another person in obtaining benefits to which the other person is not entitled"; inserted (2)(b) defining person; and inserted (3) authorizing fine up to $50,000, relating to use of fine money, and authorizing additional civil remedies for insurers.

Chapter 619 inserted (4) relating to suspension, revocation, or denial of license. Amendment effective July 1, 1993.

39-71-317. Employer not to terminate worker for filing claim — preference — jurisdiction over dispute. (1) An employer may not use as grounds for terminating a worker the filing of a claim under this chapter or chapter 72 of this title.

(2) When an injured worker is capable of returning to work within 2 years from the date of injury and has received a medical release to return to work, the worker must be given a preference over other applicants for a comparable position that becomes vacant if the position is consistent with the worker's physical condition and vocational abilities.

(3) This preference applies only to employment with the employer for whom the employee was working at the time the injury occurred.

(4) The department and workers' compensation court do not have jurisdiction to administer or resolve a dispute under this section. Exclusive jurisdiction is with the district court.

History: En. Sec. 20, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

39-71-318. Hearings — rules of evidence. The statutory and common law rules of evidence do not apply to a hearing before the department under this chapter.

History: En. Sec. 1, Ch. 558, L. 1991.

Cross-References

Montana Rules of Evidence, Title 26, ch. 10.

Part 4

Coverage, Liability, and Subrogation

39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers as defined in 39-71-117 and to all employees as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows such an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116;

(c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors or working members of a partnership, except as provided in subsection (3);

(e) employment of a broker or salesman performing under a license issued by the board of realty regulation;

(f) employment of a direct seller engaged in the sale of consumer products, primarily in the customer's home;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(h) employment of any person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(i) employment with any railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;

(j) employment as an official, including a timer, referee, or judge, at a school amateur athletic event, unless the person is otherwise employed by a school district;

(k) any person performing services as a newspaper carrier or free-lance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection, "free-lance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph. As used in this subsection, "newspaper carrier":

(i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles; but

(ii) does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(l) cosmetologist's services and barber's services as defined in 39-51-204(1)(l);

(m) a person who is employed by an enrolled tribal member who operates solely within the exterior boundaries of an Indian reservation.

(3) (a) A sole proprietor or a working member of a partnership who represents to the public that the person is an independent contractor shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

(b) The application must be made in accordance with the rules adopted by the department. The department may deny the application only if it determines that the applicant is not an independent contractor.

(c) When an application is approved by the department, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(d) When an election of an exemption is approved by the department, the election remains effective and the independent contractor retains the status as an independent contractor until the independent contractor notifies the department of any change in status and provides a description of present work status.

(e) If the department denies the application for exemption, the applicant may contest the denial by petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with the procedure established in 39-51-2403 and 39-51-2404.

(4) (a) A private corporation shall provide coverage for its officers and other employees under the provisions of compensation plan No. 1, 2, or 3. However, pursuant to rules the department promulgates and subject in all cases to approval by the department, an officer of a private corporation may elect not to be bound as an employee under this chapter by giving a written notice, on a form provided by the department, served in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the employer and to the department; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the employer, to the department, and to the insurer.

(b) If the employer changes plans or insurers, the officer's previous election is not effective and the officer shall again serve notice as provided if the officer elects not to be bound.

(c) The appointment or election of an employee as an officer of a corporation for the purpose of excluding the employee from coverage under this chapter does not entitle the officer to elect not to be bound as an employee under this chapter. In any case, the officer shall sign the notice required by subsection (4)(a) under oath or affirmation and is subject to the penalties for false swearing under 45-7-202 if the officer falsifies the notice.

(5) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation.

History: (1), (2)(a) thru (f)En. 92-202.1 by Sec. 1, Ch. 492, L. 1973; amd. Sec. 1, Ch. 550, L. 1977; Sec. 92-202.1, R.C.M. 1947; (2)(g)En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2931, R.C.M. 1921; re-en. Sec. 2931, R.C.M. 1935; Sec. 92-805, R.C.M. 1947; R.C.M. 1947, 92-202.1, 92-805; amd. Sec. 58, Ch. 397, L. 1979; amd. Sec. 1, Ch. 470, L. 1983; amd. Sec. 1, Ch. 94, L. 1985; amd. Sec. 1, Ch. 100, L. 1985; amd. Sec. 3, Ch. 336, L. 1985; amd. Sec. 1, Ch. 148, L. 1987; amd. Sec. 1, Ch. 290, L. 1987; amd. Sec. 6, Ch. 314, L. 1987; amd. Sec. 10, Ch. 464, L. 1987; amd. Sec. 2, Ch. 526, L. 1987; amd. Sec. 1, Ch. 33, L. 1989; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 39, Ch. 16, L. 1991; amd. Sec. 2, Ch. 573, L. 1991; amd. Sec. 4, Ch. 555, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 555 inserted (2)(m) that read: "(m) a person who is employed by an enrolled tribal member who operates solely within the exterior boundaries of an Indian reservation"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Regulation of real estate brokers and salesmen, Title 37, ch. 51.

Exemption, 39-51-604.

"Casual employment" defined, 39-71-116.

"Insurer" defined, 39-71-116.

"Employer" defined, 39-71-117.

"Employee" defined, 39-71-118.

"Injury" or "injured" defined, 39-71-119.

Compensation plan No. 1, Title 39, ch. 71, part 21.

Compensation plan No. 2, Title 39, ch. 71, part 22.

Compensation plan No. 3, Title 39, ch. 71, part 23.

39-71-402. Extraterritorial application and reciprocity — exception. (1) If a worker employed in this state who is subject to the provisions of this chapter temporarily leaves the state incidental to that employment and receives an injury arising out of and in the course of employment, the provisions of this chapter apply to the worker as though the worker were injured within this state.

(2) Except as provided in subsection (5), if a worker from another state and the worker's employer from another state are temporarily engaged in work within this state, this chapter does not apply to them:

(a) if the employer and employee are bound by the provisions of the workers' compensation law or similar law of the other state that applies to them while they are in the state of Montana; and

(b) if the Workers' Compensation Act of this state is recognized and given effect as the exclusive remedy for workers employed in this state who are injured while temporarily employed in the other state.

(3) A certificate from an authorized officer of the workers' compensation department or similar agency of another state certifying that an employer of the other state is bound by the Workers' Compensation Act of the state and that its act will be applied to employees of the employer while in the state of Montana is prima facie evidence of the application of the workers' compensation law of the certifying state.

(4) The department may, with the approval of the governor, enter into agreements with workers' compensation agencies of other states for the purpose of promulgating regulations not inconsistent with the provisions of this chapter to carry out the extraterritorial application of the workers' compensation laws of the agreeing states.

(5) Employers from another state that are engaged in the construction industry, as defined in 39-71-116, and that employ workers from another state shall obtain coverage for those workers under the provisions of this chapter.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2911, R.C.M. 1921; re-en. Sec. 2911, R.C.M. 1935; amd. Sec. 1, Ch. 70, L. 1967; amd. Sec. 17, Ch. 23, L. 1975; amd. Sec. 8, Ch. 550, L. 1977; R.C.M. 1947, 92-614(2) thru (5); amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 4, Ch. 480, L. 1991; amd. Sec. 3, Ch. 458, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 458 at beginning of (2) inserted exception clause; substituted present (5) requiring construction industry employers that employ workers from another state to obtain coverage for former language that read: "The provisions of this section do not apply to the construction industry as defined in 39-71-116"; and made minor changes in style. Amendment effective April 21, 1993.

Cross-References

Governor — sole official organ of communication, 2-15-201.

"Division" defined, 39-71-116.

"Employer" defined, 39-71-117.

"Employee" defined, 39-71-118.

"Worker" defined, 39-71-118.

"Injury" or "injured" defined, 39-71-119.

39-71-403. Plan three exclusive for state agencies — election of plan by other public corporations — financing of self-insurance fund. (1) If a state agency is the employer, the terms, conditions, and provisions of compensation plan No. 3, state fund, are exclusive, compulsory, and obligatory upon both employer and employee. Any sums necessary to be paid under the provisions of this chapter by any state agency are considered to be ordinary and necessary expense of the agency. The agency shall make appropriation of and pay the sums into the state fund at the time and in the manner provided for in this chapter, notwithstanding that the state agency may have failed to anticipate the ordinary and necessary expense in any budget, estimate of expenses, appropriations, ordinances, or otherwise.

(2) A public corporation, other than a state agency, may elect coverage under compensation plan No. 1, plan No. 2, or plan No. 3, separately or jointly with any other public corporation other than a state agency. A public corporation electing compensation plan No. 1 may purchase reinsurance or issue bonds or notes pursuant to subsection (3)(b). A public corporation electing compensation plan No. 1 is subject to the same provisions as a private employer electing compensation plan No. 1.

(3) (a) A public corporation, other than a state agency, that elects plan No. 1 may establish a fund sufficient to pay the compensation and benefits provided for in this chapter and chapter 72 and to discharge all liabilities that reasonably incur during the fiscal year for which the election is effective. Proceeds from the fund must be used only to pay claims covered by this chapter and chapter 72 and for actual and necessary expenses required for the efficient administration of the fund, including debt service on any bonds and notes issued pursuant to subsection (3)(b).

(b) (i) A public corporation, other than a state agency, separately or jointly with another public corporation, other than a state agency, may issue and sell its bonds and notes for the purpose of establishing, in whole or in part, the self-insurance workers' compensation fund provided for in subsection (3)(a) and to pay the costs associated with the sale and issuance of the bonds. Bonds and notes may be issued in an amount not exceeding 3% of the taxable valuation of the public corporation as of the date of issue. The bonds and notes must be authorized by resolution of the governing body of the public corporation and are payable from an annual property tax levied in the amount necessary to pay principal and interest on the bonds or notes. This authority to levy an annual property tax exists despite any provision of law or maximum levy limitation to the contrary. The revenues derived from the sale of the bonds and notes may not be used for any other purpose.

(ii) The bonds and notes:

(A) may be sold at public or private sale;

(B) do not constitute debt within the meaning of any statutory debt limitation; and

(C) may contain other terms and provisions as the governing body determines.

(iii) Two or more public corporations, other than state agencies, may agree to exercise their respective borrowing powers jointly under this subsection (3)(b) or may authorize a joint board to exercise the powers on their behalf.

(iv) The fund established from the proceeds of bonds and notes issued and sold under this subsection (3)(b) may, if sufficient, be used in lieu of a surety bond, reinsurance, specific and aggregate excess insurance, or any other form of additional security necessary to demonstrate the public corporation's ability to discharge all liabilities as provided in subsection (3)(a). Subject to the 3% of taxable valuation limitation in (3)(b)(i), a public corporation may issue bonds and notes to establish a fund sufficient to discharge liabilities for periods greater than 1 year.

(4) All money in the fund established under subsection (3)(a) not needed to meet immediate expenditures must be invested by the governing body of the public corporation or the joint board created by two or more public corporations as provided in subsection (3)(b)(iii), and all proceeds of the investment must be credited to the fund.

History: En. Sec. 3, Ch. 96, L. 1915; amd. Sec. 1, Ch. 100, L. 1919; amd. Sec. 1, Ch. 196, L. 1921; re-en. Sec. 2840, R.C.M. 1921; re-en. Sec. 2840, R.C.M. 1935; amd. Sec. 1, Ch. 410, L. 1971; amd. Sec. 6, Ch. 23, L. 1975; R.C.M. 1947, 92-206(part); amd. Sec. 1, Ch. 155, L. 1979; (2) thru (4)En. Sec. 2, Ch. 155, L. 1979; amd. Sec. 4, Ch. 21, L. 1981; amd. Sec. 97, Ch. 370, L. 1987; amd. Sec. 20, Ch. 613, L. 1989; amd. Sec. 1, Ch. 665, L. 1989.

Cross-References

"Insurer" defined, 39-71-116.

"Public corporation" defined, 39-71-116.

"Employer" defined, 39-71-117.

"Employee" defined, 39-71-118.

Compensation plan No. 1, Title 39, ch. 71, part 21.

Compensation plan No. 2, Title 39, ch. 71, part 22.

Compensation plan No. 3, Title 39, ch. 71, part 23.

39-71-404. Repealed. Sec. 16, Ch. 103, L. 1979.

History: En. Sec. 3, Ch. 96, L. 1915; amd. Sec. 1, Ch. 100, L. 1919; amd. Sec. 1, Ch. 196, L. 1921; re-en. Sec. 2840, R.C.M. 1921; re-en. Sec. 2840, R.C.M. 1935; amd. Sec. 1, Ch. 410, L. 1971; amd. Sec. 6, Ch. 23, L. 1975; R.C.M. 1947, 92-206(part).

39-71-405. Liability of employer who contracts work out. (1) An employer who contracts with an independent contractor to have work performed of a kind which is a regular or a recurrent part of the work of the trade, business, occupation, or profession of such employer is liable for the payment of benefits under this chapter to the employees of the contractor if the contractor has not properly complied with the coverage requirements of the Worker's Compensation Act. Any insurer who becomes liable for payment of benefits may recover the amount of benefits paid and to be paid and necessary expenses from the contractor primarily liable therein.

(2) Where an employer contracts to have any work to be done by a contractor other than an independent contractor, and the work so contracted to be done is a part or process in the trade or business of the employer, then the employer is liable to pay all benefits under this chapter to the same extent as if the work were done without the intervention of the contractor, and the work so contracted to be done shall not be construed to be casual employment. Where an employer contracts work to be done as specified in this subsection, the contractor and the contractor's employees shall come under that plan of compensation adopted by the employer.

(3) Where an employer contracts any work to be done, wholly or in part for the employer, by an independent contractor, where the work so contracted to be done is casual employment as to such employer, then the contractor shall become the employer for the purposes of this chapter.

History: (1)En. 92-410.1 by Sec. 1, Ch. 154, L. 1973; Sec. 92-410.1, R.C.M. 1947; (2), (3)En. Sec. 11, Ch. 96, L. 1915; re-en. Secs. 2901, 2902, 2903, R.C.M. 1921; re-en. Secs. 2901, 2902, 2903, R.C.M. 1935; Secs. 92-604, 92-605, 92-606, R.C.M. 1947; R.C.M. 1947, 92-410.1(part), 92-604, 92-605, 92-606; amd. Sec. 4, Ch. 103, L. 1979.

Cross-References

"Casual employment" defined, 39-71-116.

"Insurer" defined, 39-71-116.

"Employer" defined, 39-71-117.

"Independent contractor" defined, 39-71-120.

39-71-406. Deduction from wages of any part of premium a misdemeanor. It is unlawful for the employer to deduct or obtain any part of any premium required to be paid by this chapter from the wages or earnings of the employer's workers, and the making or attempt to make any such deduction is a misdemeanor. The workers' compensation old fund liability tax under 39-71-2503 is not a premium for the purpose of this section.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2937, R.C.M. 1921; re-en. Sec. 2937, R.C.M. 1935; R.C.M. 1947, 92-811; amd. Sec. 59, Ch. 397, L. 1979; amd. Sec. 6, Ch. 101, L. 1985; amd. Sec. 8, Ch. 637, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 637 inserted second sentence providing that old fund liability tax is not a premium; and made minor changes in style. Amendment effective May 13, 1993.

Retroactive Applicability: Section 14, Ch. 637, L. 1993, provided: "The workers' compensation old fund liability tax imposed on sole proprietors, subchapter S. corporation shareholders, partners of partnerships, and members and managers of limited liability companies applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

Cross-References

"Wages" defined, 39-71-116.

"Employer" defined, 39-71-117.

Penalty for misdemeanor, 46-18-212.

39-71-407. Liability of insurers — limitations. (1) Every insurer is liable for the payment of compensation, in the manner and to the extent provided in this section, to an employee of an employer that it insures who receives an injury arising out of and in the course of employment or, in the case of death from the injury, to the employee's beneficiaries, if any.

(2) (a) An insurer is liable for an injury as defined in 39-71-119 if the claimant establishes that it is more probable than not that:

(i) a claimed injury has occurred; or

(ii) a claimed injury aggravated a preexisting condition.

(b) Proof that it was medically possible that a claimed injury occurred or that the claimed injury aggravated a preexisting condition is not sufficient to establish liability.

(3) An employee who suffers an injury or dies while traveling is not covered by this chapter unless:

(a) (i) the employer furnishes the transportation or the employee receives reimbursement from the employer for costs of travel, gas, oil, or lodging as a part of the employee's benefits or employment agreement; and

(ii) the travel is necessitated by and on behalf of the employer as an integral part or condition of the employment; or

(b) the travel is required by the employer as part of the employee's job duties.

(4) An employee is not eligible for benefits otherwise payable under this chapter if the employee's use of alcohol or drugs not prescribed by a physician is the major contributing cause of the accident. However, if the employer had knowledge of and failed to attempt to stop the employee's use of alcohol or drugs, this subsection does not apply.

(5) If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury to the same part of the body, the workers' compensa-

tion insurer is not liable for any compensation or medical benefits caused by the subsequent nonwork-related injury.

(6) As used in this section, "major contributing cause" means a cause that is the leading cause contributing to the result when compared to all other contributing causes.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2911, R.C.M. 1921; re-en. Sec. 2911, R.C.M. 1935; amd. Sec. 1, Ch. 70, L. 1967; amd. Sec. 17, Ch. 23, L. 1975; amd. Sec. 8, Ch. 550, L. 1977; R.C.M. 1947, 92-614(1); amd. Sec. 11, Ch. 464, L. 1987; amd. Sec. 1, Ch. 184, L. 1989; amd. Sec. 26, Ch. 619, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 619 in (4), in first sentence before "cause", substituted "major contributing" for "sole and exclusive" and after "cause of the" substituted "accident" for "injury or death"; inserted (6) defining major contributing cause; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

"Insurer" defined, 39-71-116.
"Employer" defined, 39-71-117.
"Employee" defined, 39-71-118.
"Injured" or "injury" defined, 39-71-119.

39-71-408. Liability as first lien in case of bankruptcy or failure. In case of bankruptcy, insolvency, liquidation, or the failure of an employer or insurer to meet any obligations imposed by this chapter, every liability which may be due under this chapter shall constitute a first lien upon any deposit made by such employer or insurer, and if such deposit shall not be sufficient to secure the payment of such liability in the manner and at the times provided for in this chapter, the deficiency shall be a lien upon all the property of such employer or insurer within this state and shall be prorated with other lienable claims and shall have preference over the claim of any creditor or creditors of such employer or insurer except the claims of other lienors.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2928, R.C.M. 1921; re-en. Sec. 2928, R.C.M. 1935; R.C.M. 1947, 92-802.

Cross-References

"Insurer" defined, 39-71-116.
"Employer" defined, 39-71-117.
Liens generally, Title 71, ch. 3, part 1.

39-71-409. Waivers by employee invalid. No agreement by an employee to waive any rights under this chapter for any injury to be received shall be valid.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2929, R.C.M. 1921; re-en. Sec. 2929, R.C.M. 1935; R.C.M. 1947, 92-803.

Cross-References

"Employee" defined, 39-71-118.
"Injury" or "injured" defined, 39-71-119.

39-71-410. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 3, Ch. 96, L. 1915; re-en. Sec. 2842, R.C.M. 1921; re-en. Sec. 2842, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1963; amd. Sec. 1, Ch. 145, L. 1971; amd. Sec. 1, Ch. 95, L. 1974; R.C.M. 1947, 92-208; amd. Sec. 60, Ch. 197, L. 1979.

39-71-411. Provisions of chapter exclusive remedy — nonliability of insured employer. For all employments covered under the Workers' Compensation Act or for which an election has been made for coverage under this chapter, the provisions of this chapter are exclusive. Except as provided in part 5 of this chapter for uninsured employers and except as otherwise provided in the Workers' Compensation Act, an employer is not subject to any liability whatever for the death of or personal injury to an employee covered by the Workers' Compensation Act or for any claims for contribution or indemnity asserted by a third person from whom damages are sought on account of such injuries or death. The Workers' Compensation Act binds the employee himself, and in case of death binds his personal representative and all persons having any right or claim to compensation for his injury or death, as well as the employer and the servants and employees of such employer and those conducting his business during liquidation, bankruptcy, or insolvency.

History: En. 92-204.1 by Sec. 1, Ch. 493, L. 1973; amd. Sec. 2, Ch. 550, L. 1977; R.C.M. 1947, 92-204.1(part); amd. Sec. 1, Ch. 329, L. 1979; amd. Sec. 61, Ch. 397, L. 1979.

Cross-References

Liability of railroad or mining company to employee injured by coemployee, 39-2-703, 39-2-704.

"Employer" defined, 39-71-117.

"Employee" defined, 39-71-118.

"Injury" defined, 39-71-119.

39-71-412. Liability of third party other than employer or fellow employee — additional cause of action. The right to compensation and medical benefits as provided by this chapter is not affected by the fact that the injury, occupational disease, or death is caused by the negligence of a third party other than the employer or the servants or employees of the employer. Whenever such event occurs to an employee while performing the duties of his employment and such event is caused by the act or omission of some persons or corporations other than his employer or the servants or employees of his employer, the employee or in case of his death his heirs or personal representative shall, in addition to the right to receive compensation under this chapter, have a right to prosecute any cause of action he may have for damages against such persons or corporations.

History: En. 92-204.1 by Sec. 1, Ch. 493, L. 1973; amd. Sec. 2, Ch. 550, L. 1977; R.C.M. 1947, 92-204.1(part).

Cross-References

"Employer" defined, 39-71-117.

"Employee" defined, 39-71-118.

"Injury" defined, 39-71-119.

39-71-413. Liability of fellow employee for intentional and malicious acts or omissions — additional cause of action. If an employee receives an injury while performing the duties of his employment and the injury or injuries so received by the employee are caused by the intentional and malicious act or omission of a servant or employee of his employer, then the employee or in case of his death his heirs or personal representatives shall, in addition to the right to receive compensation under the Workers' Compensation Act, have a right to prosecute any cause of action he may have for damages against the servants or employees of his employer causing the injury.

History: En. 92-204.1 by Sec. 1, Ch. 493, L. 1973; amd. Sec. 2, Ch. 550, L. 1977; R.C.M. 1947, 92-204.1(part).

Cross-References

Liability of railroad or mining company to employee injured by coemployee, 39-2-703, 39-2-704.

"Employer" defined, 39-71-117.

"Employee" defined, 39-71-118.

"Injury" defined, 39-71-119.

39-71-414. Subrogation. (1) If an action is prosecuted as provided for in 39-71-412 or 39-71-413 and except as otherwise provided in this section, the insurer is entitled to subrogation for all compensation and benefits paid or to be paid under the Workers' Compensation Act. The insurer's right of subrogation is a first lien on the claim, judgment, or recovery.

(2) (a) If the injured employee intends to institute the third-party action, the employee shall give the insurer reasonable notice of the intention to institute the action.

(b) The injured employee may request that the insurer pay a proportionate share of the reasonable cost of the action, including attorney fees.

(c) The insurer may elect not to participate in the cost of the action. If this election is made, the insurer waives 50% of its subrogation rights granted by this section.

(d) If the injured employee or the employee's personal representative institutes the action, the employee is entitled to at least one-third of the amount recovered by judgment or settlement less a proportionate share of reasonable costs, including attorney fees, if the amount of recovery is insufficient to provide the employee with that amount after payment of subrogation.

(3) If an injured employee refuses or fails to institute the third-party action within 1 year from the date of injury, the insurer may institute the action in the name of the employee and for the employee's benefit or that of the employee's personal representative. If the insurer institutes the action, it shall pay to the employee any amount received by judgment or settlement that is in excess of the amounts paid or to be paid under the Workers' Compensation Act after the insurer's reasonable costs, including attorney fees for prosecuting the action, have been deducted from the recovery.

(4) An insurer may enter into compromise agreements in settlement of subrogation rights.

(5) Regardless of whether the amount of compensation and other benefits payable under the Workers' Compensation Act have been fully determined, the insurer and the claimant's heirs or personal representative may stipulate the proportion of the third-party settlement to be allocated under subrogation. Upon review and approval by the department, the agreement constitutes a compromise settlement of the issue of subrogation and may not be reopened by the department.

(6) (a) The insurer is entitled to full subrogation rights under this section, unless the claimant is able to demonstrate damages in excess of the workers' compensation benefits and the third-party recovery combined. If the insurer is entitled to subrogation under this section, the insurer may subrogate against the entire settlement or award of a third-party claim brought by the claimant or the claimant's personal representative without regard to the nature of the damages.

(b) If a survival action does not exist and the parties reach a settlement of a wrongful death claim without apportionment of damages by a court or jury, the insurer may subrogate against the entire settlement amount, without regard to the parties' apportionment of the damages, unless the insurer is a party to the settlement agreement.

(7) Regardless of whether the amount of compensation and other benefits payable have been fully determined, the insurer and the claimant may stipulate the proportion of the third-party settlement to be allocated under subrogation. Upon review and approval by the department, the agreement constitutes a compromise settlement of the issue of subrogation and may not be reopened by the department.

History: En. 92-204.2 by Sec. 3, Ch. 550, L. 1977; R.C.M. 1947, 92-204.2; amd. Sec. 12, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 4, Ch. 323, L. 1991; amd. Sec. 2, Ch. 574, L. 1991; amd. Sec. 1, Ch. 459, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 459 substituted second sentence of (6)(a) regarding insurer subrogation rights for former sentence that read: "The insurer may subrogate against the entire settlement or award of a third-party claim brought by the claimant or his personal representative, without regard to the nature of the damages"; and made minor changes in style.

Cross-References

"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.
"Year" defined, 39-71-116.
"Employee" defined, 39-71-118.
"Injury" or "injured" defined, 39-71-119.

39-71-415. Procedure for resolving disputes regarding independent contractor status. (1) If an individual, employer, or insurer has a dispute as to whether an individual is an independent contractor or an employee as defined in this chapter, any party may petition a department of labor and industry appeals referee for resolution of the dispute in accordance with 39-51-1109 and may appeal from a decision of the appeals referee in the same manner as prescribed in 39-51-2403 and 39-51-2404.

(2) If a claimant and insurer have a dispute over benefits and the dispute involves an issue of whether the claimant is an independent contractor or employee as defined in this chapter, either party may petition the workers' compensation judge for resolution of the dispute in accordance with 39-71-2905.

(3) Notwithstanding the provisions of subsection (1), an individual may apply to the department for an exemption from the Workers' Compensation Act in accordance with 39-71-401.

History: En. Sec. 7, Ch. 314, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

39-71-416 through 39-71-420 reserved.

39-71-421. Financial incentives to institute safety programs. Insurers may provide financial incentives to an employer who implements a formal safety program. An insurer may provide to an employer a premium discount that reflects the degree of risk diminished by the implemented safety program.

History: En. Sec. 9, Ch. 464, L. 1987; amd. Sec. 21, Ch. 613, L. 1989.

39-71-422 through 39-71-425 reserved.

39-71-426. Reciprocal agreements with Canadian provinces — exception. (1) Subject to the conditions provided in 39-71-427 and subsection (2) of this section, the governor may enter into agreements with duly authorized representatives of any Canadian province, granting reciprocal application of the workers' compensation laws of this state to Montana employers and workers if they are temporarily engaged in work in that province.

(2) Subsection (1) does not apply to the construction industry as defined in 39-71-116.

History: En. Sec. 1, Ch. 388, L. 1989; amd. Sec. 5, Ch. 480, L. 1991.

39-71-427. Conditions for reciprocal agreements. An agreement entered into under 39-71-426 must contain provisions that extend to Montana employers and workers the same privileges, benefits, and exemptions from payment of taxes and premiums for workers' compensation coverage as provided under the laws of this state. The agreement must, in the judgment of the governor, be fair and equitable and in the best interests of the citizens of this state.

History: En. Sec. 2, Ch. 388, L. 1989.

39-71-428. Denial of reciprocity. Beginning September 30, 1989, the workers' compensation laws of this state apply to any employer or worker of a Canadian province temporarily engaged in work within this state if the province has not entered into an agreement as provided for in 39-71-426.

History: En. Sec. 3, Ch. 388, L. 1989.

39-71-429 and 39-71-430 reserved.

39-71-431. Assigned risk plan. (1) Following the date on which the provisions of 39-71-2311 through 39-71-2320 and 39-71-2337 are implemented but no later than December 31, 1990, the commissioner of the department of labor and industry may order the establishment of and administer a plan to equitably apportion among the state fund, plan No. 3, and private insurers, plan No. 2, the coverage required by this chapter for employers who are unable to procure coverage through ordinary methods. In determining whether to order an assigned risk plan to be established, the commissioner shall consider the effect a plan would have on the availability of workers' compensation insurance and the need to provide competitive workers' compensation premium rates for employers in this state. If the commissioner orders the establishment of an assigned risk plan, it may not take effect until at least 6 months following the commissioner's order creating the plan.

(2) All plan No. 2 insurers and the state fund shall subscribe to and participate in the assigned risk plan.

(3) If an insurer refuses to accept its equitable apportionment under the assigned risk plan, the commissioner of insurance may suspend or revoke the insurer's authority to issue workers' compensation insurance policies in this state.

(4) If an assigned risk plan is established and in effect, the state fund, plan No. 3, is not required to insure any employer in this state requesting coverage, and it may refuse coverage for an employer, except for a state agency.

(5) If an assigned risk plan is established and in effect, an employer who is refused the coverage required by this chapter by the state fund, plan No. 3, and by at least two private insurers, plan No. 2, may be assigned coverage by the commissioner under the assigned risk plan pursuant to the procedure established by the commissioner for the equitable apportionment of coverage.

History: En. Sec. 12, Ch. 613, L. 1989; amd. Sec. 5, Ch. 323, L. 1991.

Cross-References

Health insurance guaranty associations, Title 33, ch. 10, part 2.

39-71-432. Definitions. As used in 39-71-433, the following definitions apply:

(1) "Business entity" means a business enterprise owned by a single person, corporation, organization, business trust, trust, partnership, joint venture, association, or other business entity.

(2) "Group" means two or more business entities that join together with the approval of the department to purchase individual workers' compensation insurance policies covering each business entity that is part of a group.

History: En. Sec. 20, Ch. 619, L. 1993.

Compiler's Comments

Effective Date: Section 30, Ch. 619, L. 1993, provided: "[This act] is effective July 1, 1993."

39-71-433. Group purchase of workers' compensation insurance. (1) On receiving approval of the department, two or more business entities may join together to form a group to purchase individual workers' compensation insurance policies covering each member of the group.

(2) To be eligible to join a group, the department shall determine that a business entity is engaged in a business pursuit that is the same as or similar to the business pursuits of the other entities participating in the group.

(3) The department shall establish a certification program for groups organized under this section and shall issue to eligible business entities certificates of approval that authorize formation and maintenance of a group.

(4) The department by rule shall adopt forms, criteria, and procedures for the issuance of certificates of approval to groups under this section.

(5) A group certified under this section may purchase individual workers' compensation insurance policies covering each member of the group from any insurer authorized to write workers' compensation insurance in this state, except that the state fund, as defined in 39-71-2312, has the right to refuse coverage of a group and its plan of operation but cannot refuse coverage to an individual employer. Under an individual policy, the group is entitled to a premium or volume discount that would be applicable to a policy of the combined premium amount of the individual policies.

(6) A group shall apportion any discount or policyholder dividend received on workers' compensation insurance coverage among the members of the group according to a formula adopted in the plan of operation for the group.

(7) A group shall adopt a plan of operation that must include the composition and selection of a governing board, the methods for administering the group, and guidelines for the workers' compensation insurance coverage obtained by the group, including the payment of premiums, the distribution of discounts, and the method for providing risk management. A group shall file a copy of its plan of operation with the department.

History: En. Sec. 21, Ch. 619, L. 1993.

Compiler's Comments

Effective Date: Section 30, Ch. 619, L. 1993, provided: "[This act] is effective July 1, 1993."

39-71-434. Deductible insurance policy provision for medical benefits. (1) In order to lower the amount an employer is required to pay to obtain workers' compensation insurance coverage under this chapter, a workers' compensation policy issued by the state compensation insurance fund under plan No. 3 or by a private insurer under plan No. 2 must offer a deductible for the medical, hospital, and related services allowed under 39-71-704. The medical deductible must be offered in amounts of at least $500.

(2) If the insured employer chooses to accept a medical deductible, the insured employer is liable for the amount of the deductible for the medical benefits paid for each otherwise compensable claim of work injury suffered by an employee.

(3) The insured employer shall contract with the insurer to have the insurer pay the entire cost of the covered medical benefits directly to the provider of medical or related services and then seek reimbursement from the insured employer for the deductible amount. The insurer is entitled to reimbursement only for medical, hospital, and related services allowed under 39-71-704, up to the amount of the deductible.

(4) If an insured employer who has contracted with an insurer for a medical deductible does not pay the medical deductible amount to the insurer through reimbursement, the amount paid by the insurer on the claim may be included as benefits paid in a determination of the insured employer's rate.

(5) If an insured employer chooses to accept a medical deductible, then for purposes of computing rates and rating plans, all medical losses incurred must be reported to the insurer without regard to the application of any medical deductible regardless of whether the employer or the insurer pays the losses.

History: En. Sec. 1, Ch. 641, L. 1989; amd. Sec. 1, Ch. 666, L. 1991; amd. Sec. 1, Ch. 248, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 248 inserted (5) requiring reporting of medical losses to the insurer without regard to application of any medical deductible, regardless of whether the employer or insurer pays the losses. Amendment effective July 1, 1993.

39-71-435. Workers' compensation and employers' liability insurance — optional deductibles. (1) An insurer issuing a workers' compensation or an employer's liability insurance policy may offer to the policyholder, as part of the policy or by endorsement, optional deductibles for benefits payable under the policy consistent with the standards contained in subsection (3).

(2) A rating organization may develop and file a deductible plan or plans on behalf of its members consistent with the standards contained in subsection (3).

(3) The commissioner of insurance shall approve a deductible plan that is in accordance with the following standards:

(a) Claimants' rights are properly protected and claimants' benefits are paid without regard to the deductible.

(b) Premium reductions reflect the type and level of the deductible, consistent with accepted actuarial standards.

(c) Premium reductions for deductibles are determined before application of any experience modification, premium surcharge, or premium discount.

(d) Recognition is given to policyholder characteristics, including but not limited to size, financial capabilities, nature of activities, and number of employees.

(e) The policyholder is liable to the insurer for the deductible amount in regard to benefits paid for compensable claims.

(f) The insurer pays all of the deductible amount applicable to a compensable claim to the person or provider entitled to benefits and then seeks reimbursement from the policyholder for the applicable deductible amount.

(g) Failure by the policyholder to reimburse deductible amounts to the insurer is treated under the policy as nonpayment of premium.

(h) Losses subject to the deductible must be reported and recorded as losses for purposes of calculating rates for a policyholder on the same basis as losses under policies providing first dollar coverage.

(4) The state compensation insurance fund, plan No. 3, may adopt the plan filed by the rating organization or adopt an optional deductible plan that meets the requirements of this section.

(5) For purposes of 39-71-201, liability for assessments must be ascertained based on premiums collected, in the case of policies written under plan No. 2, or on the assessment levied, in the case of policies written under plan No. 3, for which the policyholder would have been obligated without the deductible. For all other taxes and assessments based on premium, the amount of premium or assessment must be determined after application of the deductible.

History: En. Sec. 8, Ch. 619, L. 1993.

Compiler's Comments

Name Change — Directions to Code Commissioner: Section 14, Ch. 630, L. 1993, provided: "Wherever the name "state compensation mutual insurance fund", meaning the fund established in 39-71-2313, appears in the Montana Code Annotated or in legislation enacted by the 1993 legislature, the code commissioner is directed to change the name to "state compensation insurance fund"." The phrase appeared in this section and was changed by the Code Commissioner as directed.

Effective Date: Section 30, Ch. 619, L. 1993, provided: "[This act] is effective July 1, 1993."

Part 5

Uninsured and Underinsured Employers

39-71-501. Definition of uninsured employer. For the purposes of 39-71-501 through 39-71-511 and 39-71-515 through 39-71-519, "uninsured employer" means an employer who has not properly complied with the provisions of 39-71-401.

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(part); amd. Sec. 62, Ch. 397, L. 1979.

39-71-502. Creation and purpose of uninsured employers' fund. There is created an uninsured employers' fund. The purpose of the fund is to pay to an injured employee of an uninsured employer the same benefits the employee would have received if the employer had been properly enrolled under compensation plan No. 1, 2, or 3, except as provided in 39-71-503(2).

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(part); amd. Sec. 13, Ch. 464, L. 1987.

Cross-References

"Uninsured employer" defined, 39-71-501.

Limitations on benefit entitlement under fund, 39-71-510.

Compensation and benefits generally, Title 39, ch. 71, part 7.

39-71-503. Administration of fund — appropriation. (1) The department shall administer the fund and shall pay all proper benefits to injured employees of uninsured employers.

(2) Surpluses and reserves may not be kept for the fund. The department shall make such payments as it considers appropriate as funds become available from time to time. The payment of weekly disability benefits takes preference over the payment of medical benefits. No lump-sum payments of future projected benefits, including impairment awards, may be made from the fund. The board of investments shall invest the money of the fund. The cost of administration of the fund must be paid out of the money in the fund.

(3) The amounts necessary for the payment of benefits from this fund are statutorily appropriated, as provided in 17-7-502, from this fund.

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(part); amd. Sec. 14, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 5, Ch. 555, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 555 inserted (3) statutorily appropriating amounts necessary to pay benefits; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Investments, Title 17, ch. 6, part 2.
"Division" defined, 39-71-116.
"Payroll" defined, 39-71-116.

39-71-504. Funding of fund — option for agreement between department and injured employee. The fund is funded in the following manner:

(1) The department may require that the uninsured employer pay to the fund a penalty of either up to double the premium amount the employer would have paid on the payroll of the employer's workers in this state if the employer had been enrolled with compensation plan No. 3 or $200, whichever is greater. In determining the premium amount for the calculation of the penalty under this subsection, the department shall make an assessment on how much premium would have been paid on the employer's past 3-year payroll for periods within the 3 years when the employer was uninsured. An assessment for payroll paid by the uninsured employer for any time prior to July 1, 1977, may not be made.

(2) (a) The fund shall receive from an uninsured employer an amount equal to all benefits paid or to be paid from the fund to an injured employee of the uninsured employer. However, the uninsured employer's liability under this subsection (2)(a) may not exceed $50,000.

(b) The dollar limitation does not apply to an uninsured employer's liability to an injured employee or the employee's beneficiaries under 39-71-509 or 39-71-515.

(3) The department may determine that the $1,000 assessments that are charged against an insurer in each case of an industrial death under 39-71-902(1) shall be paid to the uninsured employers' fund rather than the subsequent injury fund.

(4) The department may enter into an agreement with the injured employee or the employee's beneficiaries to assign to the employee or the beneficiaries all or part of the funds received by the department from the uninsured employer pursuant to subsection (2)(a).

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(2); amd. Sec. 5, Ch. 103, L. 1979; amd. Sec. 1, Ch. 601, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 1, Ch. 661, L. 1991.

Cross-References

"Division" defined, 39-71-116.

"Insurer" defined, 39-71-116.

"Injury" defined, 39-71-119.

"Uninsured employer" defined, 39-71-501.

39-71-505. Applicability of other provisions of chapter to fund. All appropriate provisions in the Workers' Compensation Act apply to the fund in the same manner as they apply to compensation plans No. 1, 2, and 3.

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(5).

Cross-References

Compensation plan No. 1, Title 39, ch. 71, part 21.

Compensation plan No. 2, Title 39, ch. 71, part 22.

Compensation plan No. 3, Title 39, ch. 71, part 23.

39-71-506. Lien for payment of unpaid penalties and claims — levy and execution. (1) If, upon demand of the department, an uninsured employer refuses to make the payments to the fund that are provided for in subsections (1) and (2) of 39-71-504, the unpaid penalties and claims have the effect of a judgment against the employer at the time the payments become due. After the due process requirements of 39-71-2401(2) and (3) are satisfied, the department may issue a certificate setting forth the amount of payment due and direct the clerk of the district court of any county in the state to enter the certificate as a judgment on the docket pursuant to 25-9-301. From the time the judgment is docketed, it becomes a lien upon all real property of the employer. After satisfying any due process requirements, the department may enforce the judgment at any time within 10 years of creation of the lien.

(2) The department may settle through compromise with an uninsured employer the amount due the fund under 39-71-504.

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(3); amd. Sec. 63, Ch. 397, L. 1979; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 6, Ch. 555, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 555 in first sentence of (1), after "39-71-504", substituted "the unpaid penalties and claims have the effect of a judgment against the employer at the time the payments become due" for "the sums may be collected by the department through suit" and inserted second through fourth sentences regarding enforcement of the judgment; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

"Division" defined, 39-71-116.

"Uninsured employer" defined, 39-71-501.

39-71-507. Department to order uninsured employer to cease operations — noncompliance with order a misdemeanor — coordination of remedies. (1) When the department discovers an uninsured employer, it shall order him to cease operations until he has elected to be bound by a compensation plan.

(2) An employer who does not comply with the department's order to cease operations is guilty of a misdemeanor. Each day of violation is a separate offense. The county attorney may prosecute a criminal action under this subsection in the county in which the violation occurs. Prosecution under this subsection does not bar the department from enforcing its order by a civil action.

(3) The department may institute and maintain in the name of the state, through the attorney general or the county attorney of the county in which the violation occurs, an action for an injunction order or other civil remedy in district court to enforce its order to cease operations.

(4) The remedies provided in 39-71-506 and subsections (2) and (3) of this section are not mutually exclusive and may be pursued concurrently.

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(6); amd. Sec. 1, Ch. 586, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

"Division" defined, 39-71-116.

"Uninsured employer" defined, 39-71-501.

"Misdemeanor" defined, 45-2-101.

Penalty when no penalty specified, 46-18-212.

39-71-508. Coordination of remedies. An employee who suffers an injury arising out of and in the course of employment while working for an uninsured employer as defined in 39-71-501 or an employee's beneficiaries in injuries resulting in death may pursue all remedies concurrently, including but not limited to:

(1) a claim for benefits from the uninsured employers' fund;

(2) a damage action against the employer in accordance with 39-71-509;

(3) an independent action against an employer as provided in 39-71-515; or

(4) any other civil remedy provided by law.

History: En. 92-213 by Sec. 5, Ch. 550, L. 1977; R.C.M. 1947, 92-213(part); amd. Sec. 2, Ch. 601, L. 1985.

Cross-References

"Employee" defined, 39-71-118.

"Injury" defined, 39-71-119.

"Uninsured employer" defined, 39-71-501.

39-71-509. Action against uninsured employer — limitation of employer's defenses. If an injured employee or the employee's beneficiaries bring an action to recover damages for personal injuries sustained or for death resulting from personal injuries so sustained, it is not a defense for the employer that the:

(1) employee was negligent unless such negligence was willful;

(2) injury was caused by the negligence of a fellow employee; or

(3) employee had assumed the risks inherent in, incident to, or arising out of his employment or arising from the failure of the employer to provide and maintain a reasonably safe place to work or reasonably safe tools or appliances.

History: En. 92-213 by Sec. 5, Ch. 550, L. 1977; R.C.M. 1947, 92-213(part); amd. Sec. 5, Ch. 601, L. 1985.

Cross-References

"Reasonably safe place to work" defined, 39-71-116.

"Reasonably safe tools and appliances" defined, 39-71-116.

"Employee" defined, 39-71-118.

"Injury" or "injured" defined, 39-71-119.

"Uninsured employer" defined, 39-71-501.

39-71-510. Limitation on benefit entitlement under fund. Notwithstanding the provisions of 39-71-407, 39-71-502, and 39-71-503, injured employees or an employee's beneficiaries who pursue a claim for benefits from the uninsured employers' fund are not granted an entitlement by this state for full workers' compensation benefits from the fund. Benefits from the fund must be paid in accordance with the sums in the fund. If the department determines at any time that the sums in the fund are not adequate to fully pay all claims, the department may make appropriate proportionate reductions in benefits to all claimants. The reductions do not entitle claimants to retroactive reimbursements in the future.

History: En. 92-213 by Sec. 5, Ch. 550, L. 1977; R.C.M. 1947, 92-213(2); amd. Sec. 64, Ch. 397, L. 1979; amd. Sec. 4, Ch. 601, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

"Division" defined, 39-71-116.

39-71-511. Setoffs to claim against fund. A claim for benefits from the uninsured employer's fund must be discharged, finally or periodically, to the extent that an employee or the employee's beneficiaries receive actual monetary compensation by judgment or settlement from the uninsured employer, a third party who shares liability as defined in 39-71-412, or a fellow employee who shares liability as defined in 39-71-413.

History: En. Sec. 3, Ch. 601, L. 1985.

39-71-512 through 39-71-514 reserved.

39-71-515. Independent cause of action. (1) An injured employee or the employee's beneficiaries have an independent cause of action against an uninsured employer for failure to be enrolled in a compensation plan as required by this chapter.

(2) In such an action, prima facie liability of the uninsured employer exists if the claimant proves, by a preponderance of the evidence, that:

(a) the employer was required by law to be enrolled under compensation plan No. 1, 2, or 3 with respect to the claimant; and

(b) the employer was not so enrolled on the date of the injury or death.

(3) It is not a defense to such an action that the employee had knowledge of or consented to the employer's failure to carry insurance or that the employee was negligent in permitting such failure to exist.

(4) The amount of recoverable damages in such an action is the amount of compensation that the employee would have received had the employer been properly enrolled under compensation plan No. 1, 2, or 3.

(5) A plaintiff who prevails in an action brought under this section is entitled to recover reasonable costs and attorney fees incurred in the action, in addition to his damages.

History: En. Sec. 6, Ch. 601, L. 1985.

Cross-References

Costs and attorney fees, Title 25, ch. 10.

39-71-516. District court venue and jurisdiction for independent cause of action. An injured employee or an employee's beneficiaries pursuing an independent cause of action pursuant to 39-71-515 must bring such action in the district court in the district where the claimant resides or where the alleged violation occurred. The court may grant such interim relief as it considers appropriate, including but not limited to injunctive relief, attachment, or receivership.

History: En. Sec. 7, Ch. 601, L. 1985.

Cross-References

Venue generally, Title 25, ch. 2.
Attachment, Title 27, ch. 18.
Injunctions, Title 27, ch. 19.
Receivership, Title 27, ch. 20.

39-71-517. Requirement to serve papers. In pursuing remedies under 39-71-501 through 39-71-511 and 39-71-515 through 39-71-519, an injured employee or his beneficiaries shall serve all pleadings and all other litigation papers on the department and the uninsured employer, regardless of whether the department or the uninsured employer is a party to the particular action to which the papers relate.

History: **En. Sec. 8, Ch. 601, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.**

39-71-518. Setoffs against remaining liability. Any actual monetary compensation received by judgment or settlement by the injured employee or the employee's beneficiaries under 39-71-509 or 39-71-515 may be offset by the uninsured employer against his remaining liability under those sections.

History: **En. Sec. 9, Ch. 601, L. 1985.**

39-71-519. Settlement. The department, the uninsured employer, the injured employee or his beneficiaries, a third party who shares liability as defined in 39-71-412, or a fellow employee who shares liability as defined in 39-71-413 may enter into a settlement agreement to finally settle the rights and liabilities under 39-71-501 through 39-71-511 and 39-71-515 through 39-71-519 of any or all of the parties. Such a settlement is subject to department approval in accordance with 39-71-741.

History: **En. Sec. 10, Ch. 601, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.**

39-71-520. Time limit to appeal. A dispute concerning uninsured employers' fund benefits must be appealed to mediation within 90 days from the date of the determination or the determination is considered final.

History: **En. Sec. 19, Ch. 555, L. 1993.**

Compiler's Comments

Effective Date: Section 23, Ch. 555, L. 1993, provided: "[This act] is effective July 1, 1993."

39-71-521 through 39-71-530 reserved.

39-71-531. Definition of underinsured employer. For purposes of 39-71-531 through 39-71-534, the term "underinsured employer" means an employer who knowingly misrepresents the duties of an employee in order to pay lower workers' compensation rates than the employer would have been required to pay if the character of the employee's work had been properly classified. The term "knowingly" has the meaning as defined in 45-2-101.

History: **En. Sec. 1, Ch. 467, L. 1993.**

39-71-532. Penalties and remedies for underinsuring. (1) (a) The department may require that an underinsured employer pay to the department a penalty of up to double the premium that the employer would have paid if the employer had properly classified the employee or $200, whichever is greater. In determining the amount for the calculation of the penalty under this subsection (a), the department shall make an assessment on how much premium would have been paid on the employer's past 3-year payroll for periods within the 3 years when the employer was underinsured. The department shall determine the amount of the penalty based upon the gravity of the violation and the clarity of the relevant classification codes. The determination by the department is subject to the provisions in 39-71-204.

(b) The penalty provided in subsection (1)(a) may be assessed against the employer for each employee not properly classified.

(c) The fund must receive from an underinsured employer an amount equal to all benefits paid or to be paid from the fund to an injured employee of the underinsured employer. However, the uninsured employer's liability under this subsection (c) may not exceed $50,000.

(2) When the department discovers an underinsured employer, it may order the employer to cease operations until the employer's employees are properly classified and the correct premium rates are being paid to the insurer.

(3) An employer who does not comply with the department's order to cease operations is guilty of a misdemeanor. Each day of violation is a separate offense. The county attorney may bring a criminal action under this subsection in the county in which the violation occurs. Prosecution under this subsection does not bar the department from enforcing its order by a civil action.

(4) The department may institute and maintain in the name of the state, through the attorney general or the county attorney, an action for an injunction order or other civil remedy in district court to enforce its order to cease operations.

(5) This section does not limit a private insurer's civil remedies to collect premiums owed by the employer for paying insufficient premiums due to misclassification of employees.

History: En. Sec. 2, Ch. 467, L. 1993.

39-71-533. Collection of payments from underinsured employer. If, upon demand of the department, an underinsured employer refuses to make the payments due under 39-71-532, the amount due may be collected by the department through suit. The department may settle through compromise with the underinsured employer the amount to be collected.

History: En. Sec. 3, Ch. 467, L. 1993.

39-71-534. Creation of underinsured employers' fund. (1) There is created a fund into which the money collected under 39-71-532 and 39-71-533 must be deposited. The department shall administer the fund and use the money deposited into the fund to administer and enforce the provisions of 39-71-531 through 39-71-534.

(2) Any surplus in the fund may not be kept in the fund and must be deposited in the uninsured employers' fund to be used for the purposes of that fund as provided in 39-71-502.

History: En. Sec. 4, Ch. 467, L. 1993.

Part 6

Claims for Benefits

39-71-601. Statute of limitation on presentment of claim — waiver. (1) In case of personal injury or death, all claims must be forever barred unless signed by the claimant or the claimant's representative and presented in writing to the employer, the insurer, or the department, as the case may be, within 12 months from the date of the happening of the accident, either by the claimant or someone legally authorized to act on the claimant's behalf.

(2) The department may waive the time requirement up to an additional 24 months upon a reasonable showing by the claimant of:

(a) lack of knowledge of disability;

(b) latent injury; or

(c) equitable estoppel.

History: En. Sec. 10, Ch. 96, L. 1915; amd. Sec. 3, Ch. 100, L. 1919; re-en. Sec. 2899, R.C.M. 1921; amd. Sec. 1, Ch. 34, L. 1935; re-en. Sec. 2899, R.C.M. 1935; amd. Sec. 1, Ch. 264, L. 1973; R.C.M. 1947, 92-601; amd. Sec. 1, Ch. 254, L. 1989; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 24, Ch. 619, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 619 in (1), near beginning after "unless", inserted "signed by the claimant or the claimant's representative"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

"Division" defined, 39-71-116.

"Insurer" defined, 39-71-116.

"Employer" defined, 39-71-117.

39-71-602. Statute of limitation not to apply during minority or mental incompetency unless guardian appointed. No limitation of time as provided in 39-71-601 or in this chapter, known as the Workers' Compensation Act, shall run as against any injured worker who is mentally incompetent and without a guardian or an injured minor under 18 years of age who may be without a parent or guardian. A guardian in either case may be appointed by any court of competent jurisdiction, in which event the period of limitations as provided for in 39-71-601 shall begin to run on the date of appointment of such guardian or when such minor arrives at 18 years of age, whichever date is earlier.

History: En. Sec. 10, Ch. 96, L. 1915; re-en. Sec. 2900, R.C.M. 1921; amd. Sec. 9, Ch. 121, L. 1925; re-en. Sec. 2900, R.C.M. 1935; amd. Sec. 1, Ch. 79, L. 1939; amd. Sec. 5, Ch. 235, L. 1947; R.C.M. 1947, 92-602; amd. Sec. 65, Ch. 397, L. 1979.

Cross-References

Person under disability — Statute of Limitations extended, 27-2-401.

Persons under disability — guardianship and conservatorship, Title 72, ch. 5.

39-71-603. Notice of injuries other than death to be submitted within thirty days. No claim to recover benefits under the Workers' Compensation Act, for injuries not resulting in death, may be considered compensable unless, within 30 days after the occurrence of the accident which is claimed to have caused the injury, notice of the time and place where the accident occurred and the nature of the injury is given to the employer or the employer's insurer by the injured employee or someone on the employee's behalf. Actual knowledge of the accident and injury on the part of the employer or the employer's managing agent or superintendent in charge of the work upon which the injured employee was engaged at the time of the injury is equivalent to notice.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2933, R.C.M. 1921; amd. Sec. 7, Ch. 177, L. 1929; re-en. Sec. 2933, R.C.M. 1935; amd. Sec. 9, Ch. 234, L. 1957; R.C.M. 1947, 92-807; amd. Sec. 6, Ch. 103, L. 1979; amd. Sec. 66, Ch. 397, L. 1979; amd. Sec. 1, Ch. 352, L. 1987.

Cross-References

"Insurer" defined, 39-71-116.

"Employer" defined, 39-71-117.

"Employee" defined, 39-71-118.

"Injury" defined, 39-71-119.

39-71-604. Application for compensation. (1) If a worker is entitled to benefits under this chapter, the worker shall file with the insurer all reasonable information needed by the insurer to determine compensability. It is the duty of the worker's attending physician to lend all necessary assistance in making application for compensation and such proof of other matters as may be required by the rules of the department without charge to the worker. The filing of forms or other documentation by the attending physician does not constitute a claim for compensation.

(2) If death results from an injury, the parties entitled to compensation or someone in their behalf shall file a claim with the insurer. The claim must be accompanied with proof of death and proof of relationship, showing the parties entitled to compensation, certificate of the attending physician, if any, and such other proof as may be required by the department.

History: (1)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3006, R.C.M. 1921; re-en. Sec. 3006, R.C.M. 1935; amd. Sec. 6, Ch. 213, L. 1945; amd. Sec. 78, Ch. 23, L. 1975; Sec. 92-1118, R.C.M. 1947; (2)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3008, R.C.M. 1921; re-en. Sec. 3008, R.C.M. 1935; amd. Sec. 80, Ch. 23, L. 1975; Sec. 92-1120, R.C.M. 1947; R.C.M. 1947, 92-1118, 92-1120; amd. Sec. 7, Ch. 103, L. 1979; amd. Sec. 2, Ch. 525, L. 1987; amd. Sec. 22, Ch. 613, L. 1989; amd. Sec. 4, Ch. 558, L. 1991.

Cross-References

"Division" defined, 39-71-116.

"Insurer" defined, 39-71-116.

"Physician" defined, 39-71-116.

"Injury" or "injured" defined, 39-71-119.

39-71-605. Examination of employee by physician — effect of refusal to submit to examination — report and testimony of physician — cost. (1) (a) Whenever in case of injury the right to compensation under this chapter would exist in favor of any employee, the employee shall, upon the written request of the insurer, submit from time to time to examination by a physician or panel of physicians, who must be provided and paid for by the insurer, and shall likewise submit to examination from time to time by any physician or panel of physicians selected by the department.

(b) The request or order for an examination must fix a time and place for the examination, with regard for the employee's convenience, physical condition, and ability to attend at the time and place that is as close to the employee's residence as is practical. The employee is entitled to have a physician present at any examination. If the employee, after written request, fails or refuses to submit to the examination or in any way obstructs the examination, the employee's right to compensation must be suspended and is subject to the provisions of 39-71-607. Any physician or panel of physicians employed by the insurer or the department who makes or is present at any examination may be required to testify as to the results of the examination.

(2) In the event of a dispute concerning the physical condition of a claimant or the cause or causes of the injury or disability, if any, the department, at the request of the claimant or insurer, as the case may be, shall require the claimant to submit to an examination as it considers desirable by a physician or panel of physicians within the state or elsewhere who have had adequate and substantial experience in the particular field of medicine concerned with the matters presented by the dispute. The physician or panel of physicians making the examination shall file a written report of findings with the claimant and insurer for their use in the determination of the controversy involved. The requesting party shall pay the physician or panel of physicians for the examination.

(3) This section does not apply to impairment evaluations provided for in 39-71-711.

History: (1)En. Sec. 13, Ch. 96, L. 1915; re-en. Sec. 2906, R.C.M. 1921; re-en. Sec. 2906, R.C.M. 1935; amd. Sec. 16, Ch. 23, L. 1975; Sec. 92-609, R.C.M. 1947; (2)En. Sec. 10, Ch. 234, L. 1957; amd. Sec. 27, Ch. 23, L. 1975; Sec. 92-814.1, R.C.M. 1947; R.C.M. 1947, 92-609, 92-814.1; amd. Sec. 1, Ch. 422, L. 1985; amd. Sec. 15, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 5, Ch. 558, L. 1991; amd. Sec. 3, Ch. 619, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 619 in (1)(b), at end of third sentence after "suspended", inserted "and is subject to the provisions of 39-71-607"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Procedural rules on physical and mental exams, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.
"Physician" defined, 39-71-116.
"Employer" defined, 39-71-117.
"Employee" defined, 39-71-118.
"Injured" or "injury" defined, 39-71-119.

39-71-606. Insurer to accept or deny claim within thirty days of receipt — notice of benefits and entitlements to claimants — notice of denial — notice of reopening — notice to employer. (1) Every insurer under any plan for the payment of workers' compensation benefits shall, within 30 days of receipt of a claim for compensation, either accept or deny the claim, and if denied shall inform the claimant and the department in writing of such denial.

(2) The department shall make available to insurers for distribution to claimants sufficient copies of a document describing current benefits and entitlements available under Title 39, chapter 71. Upon receipt of a claim, each insurer shall promptly notify the claimant in writing of potential benefits and entitlements available by providing the claimant a copy of the document prepared by the department.

(3) Each insurer under plan No. 2 or No. 3 for the payment of workers' compensation benefits shall notify the employer of the reopening of the claim within 14 days of the reopening of a claim for the purpose of paying compensation benefits.

(4) Upon the request of an employer it insures, an insurer shall notify the employer of all compensation benefits that are ongoing and are being charged against that employer's account.

History: En. Sec. 1, Ch. 477, L. 1973; amd. Sec. 1, Ch. 173, L. 1974; R.C.M. 1947, 92-615(part); amd. Sec. 1, Ch. 122, L. 1981; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 22, Ch. 619, L. 1993; amd. Sec. 13, Ch. 630, L. 1993.

Compiler's Comments

1993 Amendments — Composite Section: Chapter 619 inserted (2) requiring distribution of a document describing current benefits and entitlements; and inserted (3) requiring plan No. 2 and plan No. 3 insurers to notify employer of claim reopening. Amendment effective July 1, 1993.

Chapter 630 inserted (2) requiring distribution of a document describing current benefits and entitlements. Amendment effective July 1, 1993.

Subsection (2) was identical in the two chapters with a slight change in style. The codifier chose the more appropriate of the two.

Cross-References

"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.
"Employer" defined, 39-71-117.

39-71-607. Suspension of payments by insurer pending receipt of medical information. Under rules adopted by the department, an insurer may suspend compensation payments pending the receipt of medical information when an injured worker unreasonably fails to keep scheduled medical appointments. If, after a medical examination, the injured worker is released to return to work, the worker forfeits the right to any suspended benefits.

History: En. Sec. 2, Ch. 477, L. 1973; amd. Sec. 2, Ch. 173, L. 1974; R.C.M. 1947, 92-616(part); amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 4, Ch. 619, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 619 near beginning of first sentence, after "department", deleted "and in the discretion of the department", after "payments" deleted "for not more than 30 days", and after "information" inserted "when an injured worker unreasonably fails to keep scheduled medical appointments" and inserted second sentence relating to forfeiture of suspended benefits. Amendment effective July 1, 1993.

Cross-References

"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.

39-71-608. Payments within thirty days by insurer without admission of liability or waiver of defense authorized — notice. An insurer may, after written notice to the claimant and the department, make payment of compensation benefits within 30 days of receipt of a claim for compensation without such payments being construed as an admission of liability or a waiver of any right of defense.

History: En. Sec. 1, Ch. 477, L. 1973; amd. Sec. 1, Ch. 173, L. 1974; R.C.M. 1947, 92-615(part); amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.

39-71-609. Denial of claim after payments made or termination of all benefits or reduction to partial benefits by insurer — fourteen days' notice required. If an insurer determines to deny a claim on which payments have been made under 39-71-608 during a time of further investigation or, after a claim has been accepted, terminates all biweekly compensation benefits, it may do so only after 14 days' written notice to the claimant, the claimant's authorized representative, if any, and the department. For injuries occurring prior to July 1, 1987, an insurer must give 14 days' written notice to the claimant before reducing benefits from total to partial. However, if an insurer has knowledge that a claimant has returned to work, compensation benefits may be terminated as of the time the claimant returned to work.

History: En. Sec. 1, Ch. 477, L. 1973; amd. Sec. 1, Ch. 173, L. 1974; R.C.M. 1947, 92-615(part); amd. Sec. 8, Ch. 103, L. 1979; amd. Sec. 5, Ch. 333, L. 1989; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.

39-71-610. Termination of benefits by insurer — department order to pay disputed benefits prior to hearing — limitation on order — right of reimbursement. If an insurer terminates biweekly compensation benefits and the termination of compensation benefits is disputed by the claimant, the department may, upon written request, order an insurer to pay additional biweekly compensation benefits prior to a hearing, but in no event may the biweekly compensation benefits be ordered to be paid under this section for a period exceeding 49 days or for any period subsequent to the date of a hearing. If after a hearing it is held that the insurer was not liable for the compensation payments ordered by the department, the insurer has the right to be reimbursed for such payments by the claimant.

History: En. 92-617 by Sec. 1, Ch. 124, L. 1975; R.C.M. 1947, 92-617; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References
"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.

39-71-611. Costs and attorneys' fees payable on denial of claim or termination of benefits later found compensable. (1) The insurer shall pay reasonable costs and attorney fees as established by the workers' compensation court if:

(a) the insurer denies liability for a claim for compensation or terminates compensation benefits;

(b) the claim is later adjudged compensable by the workers' compensation court; and

(c) in the case of attorneys' fees, the workers' compensation court determines that the insurer's actions in denying liability or terminating benefits were unreasonable.

(2) A finding of unreasonableness against an insurer made under this section does not constitute a finding that the insurer acted in bad faith or violated the unfair trade practices provisions of Title 33, chapter 18.

History: En. Sec. 2, Ch. 477, L. 1973; amd. Sec. 2, Ch. 173, L. 1974; R.C.M. 1947, 92-616(part); amd. Sec. 2, Ch. 63, L. 1979; amd. Sec. 16, Ch. 464, L. 1987.

Cross-References
Attorneys' fees, Title 25, ch. 10, part 3.
"Insurer" defined, 39-71-116.

39-71-612. Costs and attorneys' fees that may be assessed against an insurer by workers' compensation judge. (1) If an insurer pays or submits a written offer of payment of compensation under chapter 71 or 72 of this title but controversy relates to the amount of compensation due, the case is brought before the workers' compensation judge for adjudication of the controversy, and the award granted by the judge is greater than the amount paid or offered by the insurer, a reasonable attorney's fee and costs as established by the workers' compensation judge if the case has gone to a hearing may be awarded by the judge in addition to the amount of compensation.

(2) An award of attorneys' fees under subsection (1) may only be made if it is determined that the actions of the insurer were unreasonable. Any written offer of payment made 30 days or more before the date of hearing must be considered a valid offer of payment for the purposes of this section.

(3) A finding of unreasonableness against an insurer made under this section does not constitute a finding that the insurer acted in bad faith or violated the unfair trade practices provisions of Title 33, chapter 18.

History: En. 92-618 by Sec. 1, Ch. 187, L. 1975; R.C.M. 1947, 92-618; amd. Sec. 1, Ch. 575, L. 1985; amd. Sec. 17, Ch. 464, L. 1987.

Cross-References
Attorneys' fees, Title 25, ch. 10, part 3.
"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.
"Employer" defined, 39-71-117.

39-71-613. Regulation of attorneys' fees — forfeiture of fee for noncompliance. (1) When an attorney represents or acts on behalf of a claimant or any other party on any workers' compensation claim, the attorney shall submit to the department a contract of employment, on a form provided by the department, stating specifically the terms of the fee arrangement between the attorney and the claimant.

(2) The department may regulate the amount of the attorney's fee in any workers' compensation case. In regulating the amount of the fee, the department shall consider:

(a) the benefits the claimant gained due to the efforts of the attorney;

(b) the time the attorney was required to spend on the case;

(c) the complexity of the case; and

(d) any other relevant matter the department may consider appropriate.

(3) If an attorney violates a provision of this section, a rule adopted under this section, or an order fixing an attorney's fee under this section, he shall forfeit the right to any fee which he may have collected or been entitled to collect.

History: En. 92-619 by Sec. 1, Ch. 402, L. 1975; R.C.M. 1947, 92-619; amd. Sec. 18, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Attorneys' fees, Title 25, ch. 10, part 3.

"Division" defined, 39-71-116.

"Order" defined, 39-71-116.

39-71-614. Calculation of attorney fees — limitation. (1) The amount of an attorney's fee assessed against an insurer under 39-71-611 or 39-71-612 must be based exclusively on the time spent by the attorney in representing the claimant on the issues brought to hearing. The attorney must document the time spent, but the judge is not bound by the documentation submitted.

(2) The judge shall determine a reasonable attorney fee and assess costs. The hourly rate applied to the time spent must be based on the attorney's customary and current hourly rate for legal work performed in this state, subject to a maximum established by the department.

(3) This section does not restrict a claimant and an attorney from entering into a contingency fee arrangement under which the attorney receives a percentage of the amount of compensation payments received by the claimant because of the efforts of the attorney. However, an amount equal to any fee and costs assessed against an insurer under 39-71-611 or 39-71-612 and this section must be deducted from the fee an attorney is entitled to from the claimant under a contingency fee arrangement.

History: En. Sec. 2, Ch. 575, L. 1985; amd. Sec. 19, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Attorneys' fees, Title 25, ch. 10, part 3.

Part 7

Compensation and Benefits Generally

Part Cross-References

Workers' compensation exempt from medical services lien, 71-3-1118.

39-71-701. Compensation for temporary total disability — exception. (1) Subject to the limitation in 39-71-736 and subsection (4) of this section, a worker is eligible for temporary total disability benefits when the worker suffers a total loss of wages as a result of an injury and until the worker reaches maximum healing.

(2) The determination of temporary total disability must be supported by a preponderance of medical evidence.

(3) Weekly compensation benefits for injury producing temporary total disability are 66 2/3% of the wages received at the time of the injury. The maximum weekly compensation benefits may not exceed the state's average weekly wage at the time of injury. Temporary total disability benefits must be paid for the duration of the worker's temporary disability. The weekly benefit amount may not be adjusted for cost of living as provided in 39-71-702(5).

(4) If the treating physician releases a worker to return to the same, a modified, or an alternative position that the individual is able and qualified to perform with the same employer at an equivalent or higher wage than the individual received at the time of injury, the worker is no longer eligible for temporary total disability benefits even though the worker has not reached maximum healing. A worker requalifies for temporary total disability benefits if the modified or alternative position is no longer available for any reason to the worker and the worker continues to be temporarily totally disabled, as defined in 39-71-116.

(5) In cases where it is determined that periodic disability benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for such week, which amount is to be calculated from the date of the disability social security entitlement.

(6) If the claimant is awarded social security benefits, the insurer may, upon notification of the claimant's receipt of social security benefits, suspend biweekly compensation benefits for a period sufficient to recover any resulting overpayment of benefits. This subsection does not prevent a claimant and insurer from agreeing to a repayment plan.

(7) A worker may not receive both wages and temporary total disability benefits without the written consent of the insurer. A worker who receives both wages and temporary total disability benefits without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301.

History: En. 92-701.1 by Sec. 1, Ch. 471, L. 1973; R.C.M. 1947, 92-701.1; amd. Sec. 5, Ch. 21, L. 1981; amd. Sec. 21, Ch. 464, L. 1987; amd. Sec. 4, Ch. 9, Sp. L. June 1989; amd. Sec. 1, Ch. 52, L. 1991; amd. Sec. 5, Ch. 296, L. 1993; amd. Sec. 25, Ch. 619, L. 1993.

Compiler's Comments

1993 Amendments — Composite Section: Chapter 296 inserted (7) establishing a penalty for receipt of both wages and temporary total disability benefits; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 619 deleted former (6) that read: "(6) Notwithstanding subsection (3), beginning July 1, 1987, through June 30, 1991, weekly compensation benefits for temporary total disability may not exceed the state's average weekly wage of $299 established July 1, 1986"; inserted (6) authorizing insurer to suspend biweekly compensation benefits for claimant awarded Social Security benefits and providing that suspension does not prevent repayment plan; and made minor changes in style. Amendment effective July 1, 1993.

A style change in (4) was slightly different in the two chapters. The codifier chose the more appropriate of the two.

Cross-References

"Average weekly wage" defined, 39-71-116.

"Temporary total disability" defined, 39-71-116.

"Wages" defined, 39-71-116.

"Injury" or "injured" defined, 39-71-119.

39-71-702. Compensation for permanent total disability. (1) If a worker is no longer temporarily totally disabled and is permanently totally disabled, as defined in 39-71-116, the worker is eligible for permanent total disability benefits. Permanent total disability benefits must be paid for the duration of the worker's permanent total disability, subject to 39-71-710.

(2) The determination of permanent total disability must be supported by a preponderance of medical evidence.

(3) Weekly compensation benefits for an injury resulting in permanent total disability are 66 2⁄3% of the wages received at the time of the injury. The maximum weekly compensation benefits may not exceed the state's average weekly wage at the time of injury.

(4) In cases where it is determined that periodic disability benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for the week, which amount is to be calculated from the date of the disability social security entitlement.

(5) A worker's benefit amount must be adjusted for a cost-of-living increase on the next July 1 after 104 weeks of permanent total disability benefits have been paid and on each succeeding July 1. A worker may not receive more than 10 adjustments. The adjustment must be the percentage increase, if any, in the state's average weekly wage as adopted by the department over the state's average weekly wage adopted for the previous year or 3%, whichever is less.

(6) A worker may not receive both wages and permanent total disability benefits without the written consent of the insurer. A worker who receives both wages and permanent total disability benefits without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301.

(7) If the claimant is awarded social security benefits, the insurer may, upon notification of the claimant's receipt of social security benefits, suspend biweekly compensation benefits for a period sufficient to recover any resulting overpayment of benefits. This subsection does not prevent a claimant and insurer from agreeing to a repayment plan.

History: En. 92-702.1 by Sec. 1, Ch. 202, L. 1973; amd. Sec. 1, Ch. 272, L. 1974; R.C.M. 1947, 92-702.1; amd. Sec. 6, Ch. 21, L. 1981; amd. Sec. 22, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 5, Ch. 9, Sp. L. June 1989; amd. Sec. 3, Ch. 574, L. 1991; amd. Sec. 6, Ch. 296, L. 1993; amd. Sec. 27, Ch. 619, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 296 substituted (6) establishing a penalty for receipt of both wages and permanent total disability benefits for former language that read: "Notwithstanding subsection (3), beginning July 1, 1987, through June 30, 1991, the maximum weekly compensation benefits for permanent total disability may not exceed the state's average weekly wage of $299 established July 1, 1986"; and made minor changes in style. Amendment effective July 1, 1993.

Chapter 619 substituted (7) authorizing insurer to suspend biweekly compensation benefits for claimant awarded Social Security benefits and providing that suspension does not prevent repayment plan for former language that read: "Notwithstanding subsection (3), beginning July 1, 1987, through June 30, 1991, the maximum weekly compensation benefits for permanent total disability may not exceed the state's average weekly wage of $299 established July 1, 1986"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

"Average weekly wage" defined, 39-71-116.

"Permanent total disability" defined, 39-71-116.

"Wages" defined, 39-71-116.

"Injury" or "injured" defined, 39-71-119.

39-71-703. Compensation for permanent partial disability. (1) If an injured worker suffers a permanent partial disability and is no longer entitled to temporary total or permanent total disability benefits, the worker is entitled to a permanent partial disability award.

(2) The permanent partial disability award must be arrived at by multiplying the percentage arrived at through the calculation provided in subsection (3) by 350 weeks.

(3) An award granted an injured worker may not exceed a permanent partial disability rating of 100%. The criteria for the rating of disability must be calculated using the medical impairment rating as determined by the latest edition of the American medical association Guides to the Evaluation of Permanent Impairment. The percentage to be used in subsection (2) must be determined by adding the following applicable percentages to the impairment rating:

(a) if the claimant is 30 years of age or younger at the time of injury, 0%; if the claimant is over 30 years of age but under 56 years of age at the time of injury, 2%; and if the claimant is 56 years of age or older at the time of injury, 3%;

(b) for a worker who has completed less than 9 years of education, 3%; for a worker who has completed 9 through 12 years of education or who has received a graduate equivalency diploma, 2%; for a worker who has completed more than 12 years of education, 0%;

(c) if a worker has no wage loss as a result of the industrial injury, 0%; if a worker has an actual wage loss of $2 or less an hour as a result of the industrial injury, 10%; if a worker has an actual wage loss of more than $2 an hour as a result of the industrial injury, 20%; and

(d) if a worker, at the time of the injury, was performing heavy labor activity and after the injury the worker can perform only light or sedentary labor activity, 20%; if a worker, at the time of injury, was performing heavy labor activity and after the injury the worker can perform only medium labor activity, 15%; if a worker was performing medium labor activity at the time of the injury and after the injury the worker can perform only light or sedentary labor activity, 10%.

(4) The weekly benefit rate for permanent partial disability is 66 ⅔% of the wages received at the time of injury, but the rate may not exceed one-half the state's average weekly wage. The weekly benefit amount established for an injured worker may not be changed by a subsequent adjustment in the state's average weekly wage for future fiscal years.

(5) If a worker suffers a subsequent compensable injury or injuries to the same part of the body, the award payable for the subsequent injury may not duplicate any amounts paid for the previous injury or injuries.

(6) As used in this section:

(a) "heavy labor activity" means the ability to lift over 50 pounds occasionally or up to 50 pounds frequently;

(b) "medium labor activity" means the ability to lift up to 50 pounds occasionally or up to 25 pounds frequently;

(c) "light labor activity" means the ability to lift up to 25 pounds occasionally or up to 10 pounds frequently; and

(d) "sedentary labor activity" means the ability to lift up to 10 pounds occasionally or up to 5 pounds frequently.

History: En. 92-703.1 by Sec. 1, Ch. 155, L. 1973; amd. Sec. 1, Ch. 241, L. 1975; amd. Sec. 1, Ch. 278, L. 1975; R.C.M. 1947, 92-703.1; amd. Sec. 23, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 6, Ch. 9, Sp. L. June 1989; amd. Sec. 4, Ch. 574, L. 1991.

Cross-References

"Average weekly wage" defined, 39-71-116.

"Injury" or "injured" defined, 39-71-119.

39-71-704. Payment of medical, hospital, and related services — fee schedules and hospital rates — fee limitation. (1) In addition to the compensation provided under this chapter and as an additional benefit separate and apart from compensation benefits actually provided, the following must be furnished:

(a) After the happening of a compensable injury and subject to other provisions of this chapter, the insurer shall furnish reasonable primary medical services for conditions resulting from the injury for those periods as the nature of the injury or the process of recovery requires.

(b) The insurer shall furnish secondary medical services only upon a clear demonstration of cost-effectiveness of the services in returning the injured worker to actual employment.

(c) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(d) The insurer shall reimburse a worker for reasonable travel expenses incurred in travel to a medical provider for treatment of an injury only if the travel is incurred at the request of the insurer. Reimbursement must be at the rates allowed for reimbursement of travel by state employees.

(e) Except for the repair or replacement of a prosthesis furnished as a result of an industrial injury, the benefits provided for in this section terminate when they are not used for a period of 60 consecutive months.

(f) Notwithstanding subsection (1)(a), the insurer may not be required to furnish, after the worker has achieved medical stability, palliative or maintenance care except:

(i) when provided to a worker who has been determined to be permanently totally disabled and for whom it is medically necessary to monitor administration of prescription medication to maintain the worker in a medically stationary condition; or

(ii) when necessary to monitor the status of a prosthetic device.

(g) If the worker's treating physician believes that palliative or maintenance care that would otherwise not be compensable under subsection (1)(f) is appropriate to enable the worker to continue current employment or that there is a clear probability of returning the worker to employment, the treating physician shall first request approval from the insurer for the treatment. If approval is not granted, the treating physician may request approval from the department for the treatment. The department shall appoint a panel of physicians, including at least one treating physician from the area of specialty in which the injured worker is being treated, pursuant to rules that the department may adopt, to review the proposed treatment and determine its appropriateness.

(h) Notwithstanding any other provisions of this chapter, the department, by rule and upon the advice of the professional licensing boards of practitioners affected by the rule, may exclude from compensability any medical treatment that the department finds to be unscientific, unproved, outmoded, or experimental.

(2) The department shall annually establish a schedule of fees for medical nonhospital services necessary for the treatment of injured workers. Charges submitted by providers must be the usual and customary charges for nonworkers' compensation patients. The department may require insurers to submit information to be used in establishing the schedule. The department shall establish utilization and treatment standards for all medical services provided for under this chapter in consultation with the standing medical advisory committees provided for in 39-71-1109.

(3) The department shall establish rates for hospital services necessary for the treatment of injured workers. Beginning January 1, 1995, the rates may be based on per diem or diagnostic-related groups. The rates established by the department pursuant to this subsection may not be less than medicaid reimbursement rates. Approved rates must be in effect for a period of 12 months from the date of approval. The department may coordinate this ratesetting function with other public agencies that have similar responsibilities. For services available in Montana, insurers are not required to pay facilities located outside Montana rates that are greater than those allowed for services delivered in Montana.

(4) The percentage increase in medical costs payable under this chapter may not exceed the annual percentage increase in the state's average weekly wage as defined in 39-71-116.

(5) Payment pursuant to reimbursement agreements between managed care organizations or preferred provider organizations and insurers is not bound by the provisions of this section.

(6) Disputes between an insurer and a medical service provider regarding the amount of a fee for medical services must be resolved by a hearing before the department upon written application of a party to the dispute.

(7) (a) After the initial visit, the worker is responsible for 20%, but not to exceed $10, of the cost of each subsequent visit to a medical service provider for treatment relating to a compensable injury or occupational disease, unless the visit is to a medical service provider in a managed care organization as requested by the insurer or is a visit to a preferred provider as requested by the insurer.

(b) After the initial visit, the worker is responsible for $25 of the cost of each subsequent visit to a hospital emergency department for treatment relating to a compensable injury or occupational disease.

(c) "Visit", as used in subsections (7)(a) and (7)(b), means each time the worker obtains services relating to a compensable injury or occupational disease from:

(i) a treating physician;

(ii) a physical therapist;

(iii) a psychologist; or

(iv) hospital outpatient services available in a nonhospital setting.

(d) A worker is not responsible for the cost of a subsequent visit pursuant to subsection (7)(a) if the visit is an examination requested by an insurer pursuant to 39-71-605.

History: En. 92-706.1 by Sec. 1, Ch. 252, L. 1973; amd. Sec. 1, Ch. 43, L. 1975; amd. Sec. 1, Ch. 189, L. 1975; R.C.M. 1947, 92-706.1(1); amd. Sec. 1, Ch. 90, L. 1981; amd. Sec. 2, Ch. 422, L. 1985; amd. Sec. 25, Ch. 464, L. 1987; amd. Sec. 4, Ch. 333, L. 1989; amd. Secs. 23, 64, Ch. 613, L. 1989; amd. Sec. 7, Ch. 9, Sp. L. June 1989; amd. Sec. 1, Ch. 131, L. 1991; amd. Sec. 6, Ch. 558, L. 1991; amd. Sec. 5, Ch. 574, L. 1991; amd. Sec. 3, Ch. 628, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 628 substituted (1)(a) and (1)(b) regarding provision of medical services for compensable injury for former (1)(a) that read: "After the happening of the injury and subject to the provisions of subsection (1)(d), the insurer shall furnish, without limitation as to length of time or dollar amount, reasonable services by a physician or surgeon, reasonable hospital services and medicines when needed, and such other treatment as may be approved by the department for the injuries sustained, subject to the requirements of 39-71-727"; in first sentence of (1)(d), after "injury", substituted "only if the travel is incurred at the request of the insurer" for "pursuant to rules adopted by the department"; inserted (1)(f) regarding provision of palliative or maintenance care after a worker has achieved medical stability; inserted (1)(g) regarding approval of treatment; inserted (1)(h) providing for exclusion from compensability certain medical treatment; inserted second sentence of (2) requiring that charges be usual and customary and inserted fourth sentence requiring establishment of utilization and treatment standards; at beginning of first sentence of (3) deleted "Beginning January 1, 1988", inserted second and third sentences regarding rates, and inserted sixth sentence regarding payment of services to facilities located outside Montana; at beginning of (4) deleted "Notwithstanding subsection (2), beginning January 1, 1988, through December 31, 1991, the maximum fees payable by insurers must be limited to the fee schedule established in January 1987. Notwithstanding subsection (3), beginning January 1, 1988, through December 31, 1991, the hospital rates payable by insurers must be limited to those set in January 1988. After December 31, 1991"; inserted (5) relating to payment pursuant to reimbursement agreements; inserted (6) pertaining to dispute resolution; inserted (7) regarding worker responsibility for costs; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.
"Physician" defined, 39-71-116.
"Employer" defined, 39-71-117.
"Injury" or "injured" defined, 39-71-119.

39-71-705. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 8, Ch. 100, L. 1919; amd. Sec. 5, Ch. 196, L. 1921; re-en. Sec. 2920, R.C.M. 1921; amd. Sec. 16, Ch. 121, L. 1925; amd. Sec. 16, Ch. 177, L. 1929; re-en. Sec. 2920, R.C.M. 1935; amd. Sec. 5, Ch. 213, L. 1945; amd. Sec. 5, Ch. 230, L. 1947; amd. Sec. 6, Ch. 7, L. 1949; amd. Sec. 5, Ch. 48, L. 1951; amd. Sec. 5, Ch. 38, L. 1953; amd. Sec. 6, Ch. 253, L. 1955; amd. Sec. 7, Ch. 234, L. 1957; amd. Sec. 5, Ch. 162, L. 1961; amd. Sec. 5, Ch. 149, L. 1965; amd. Sec. 5, Ch. 207, L. 1967; amd. Sec. 1, Ch. 140, L. 1971; amd. Sec. 1, Ch. 204, L. 1973; amd. Sec. 2, Ch. 386, L. 1975; R.C.M. 1947, 92-709(part).

39-71-706. Repealed. Sec. 68, Ch. 464, L. 1987.

History: (1), (2), (4)En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 8, Ch. 100, L. 1919; amd. Sec. 5, Ch. 196, L. 1921; re-en. Sec. 2920, R.C.M. 1921; amd. Sec. 16, Ch. 121, L. 1925; amd. Sec. 16, Ch. 177, L. 1929; re-en. Sec. 2920, R.C.M. 1935; amd. Sec. 5, Ch. 213, L. 1945; amd. Sec. 5, Ch. 230, L. 1947; amd. Sec. 6, Ch. 7, L. 1949; amd. Sec. 5, Ch. 48, L. 1951; amd. Sec. 5, Ch. 38, L. 1953; amd. Sec. 6, Ch. 253, L. 1955; amd. Sec. 7, Ch. 234, L. 1957; amd. Sec. 5, Ch. 162, L. 1961; amd. Sec. 5, Ch. 149, L. 1965; amd. Sec. 5, Ch. 207, L. 1967; amd. Sec. 1, Ch. 140, L. 1971; amd. Sec. 1, Ch. 204, L. 1973; amd. Sec. 2, Ch. 386, L. 1975; Sec. 92-709, R.C.M. 1947; (3)En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2922, R.C.M. 1921; re-en. Sec. 2922, R.C.M. 1935; Sec. 92-711, R.C.M. 1947; R.C.M. 1947, 92-709(part), 92-711.

39-71-707. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 8, Ch. 100, L. 1919; amd. Sec. 5, Ch. 196, L. 1921; re-en. Sec. 2920, R.C.M. 1921; amd. Sec. 16, Ch. 121, L. 1925; amd. Sec. 16, Ch. 177, L. 1929; re-en. Sec. 2920, R.C.M. 1935; amd. Sec. 5, Ch. 213, L. 1945; amd. Sec. 5, Ch. 230, L. 1947; amd. Sec. 6, Ch. 7, L. 1949; amd. Sec. 5, Ch. 48, L. 1951; amd. Sec. 5, Ch. 38, L. 1953; amd. Sec. 6, Ch. 253, L. 1955; amd. Sec. 7, Ch. 234, L. 1957; amd. Sec. 5, Ch. 162, L. 1961; amd. Sec. 5, Ch. 149, L. 1965; amd. Sec. 5, Ch. 207, L. 1967; amd. Sec. 1, Ch. 140, L. 1971; amd. Sec. 1, Ch. 204, L. 1973; amd. Sec. 2, Ch. 386, L. 1975; R.C.M. 1947, 92-709(part).

39-71-708. Compensation for disfigurement. (1) Injured workers who suffer serious face, head, or neck disfigurement may be entitled to benefits not to exceed $2,500, in addition to benefits payable under 39-71-703.

(2) A payment under this section may not be in lieu of the separate benefit of medical and hospital services or of any benefits paid under 39-71-701 for temporary total disability.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 8, Ch. 100, L. 1919; amd. Sec. 5, Ch. 196, L. 1921; re-en. Sec. 2920, R.C.M. 1921; amd. Sec. 16, Ch. 121, L. 1925; amd. Sec. 16, Ch. 177, L. 1929; re-en. Sec. 2920, R.C.M. 1935; amd. Sec. 5, Ch. 213, L. 1945; amd. Sec. 5, Ch. 230, L. 1947; amd. Sec. 6, Ch. 7, L. 1949; amd. Sec. 5, Ch. 48, L. 1951; amd. Sec. 5, Ch. 38, L. 1953; amd. Sec. 6, Ch. 253, L. 1955; amd. Sec. 7, Ch. 234, L. 1957; amd. Sec. 5, Ch. 162, L. 1961; amd. Sec. 5, Ch. 149, L. 1965; amd. Sec. 5, Ch. 207, L. 1967; amd. Sec. 1, Ch. 140, L. 1971; amd. Sec. 1, Ch. 204, L. 1973; amd. Sec. 2, Ch. 386, L. 1975; R.C.M. 1947, 92-709(part); amd. Sec. 26, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 7, Ch. 555, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 555 at beginning of (1) substituted "Injured workers who suffer" for "The department may award proper and equitable benefits for" and near middle, after "disfigurement", inserted "may be entitled to benefits"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

"Division" defined, 39-71-116.

"Temporary total disability" defined, 39-71-116.

39-71-709. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. 92-709.2 by Sec. 1, Ch. 386, L. 1975; R.C.M. 1947, 92-709.2.

39-71-710. Termination of benefits upon retirement. (1) If a claimant is receiving disability or rehabilitation compensation benefits and the claimant receives social security retirement benefits or is eligible to receive full social security retirement benefits, the claimant is considered to be retired. When the claimant is considered retired, the liability of the insurer is ended for payment of wage supplement, permanent total disability, and rehabilitation compensation benefits. However, the insurer remains liable for temporary total disability benefits, any impairment award, and medical benefits.

(2) If a claimant who is eligible to receive social security retirement benefits and is gainfully employed suffers a work-related injury, the insurer retains liability for temporary total disability benefits, any impairment award, and medical benefits.

History: En. Sec. 1, Ch. 386, L. 1981; amd. Sec. 27, Ch. 464, L. 1987.

Cross-References

"Insurer" defined, 39-71-116.

"Permanent partial disability" defined, 39-71-116.

39-71-711. Impairment evaluation — ratings. (1) An impairment rating:

(a) is a purely medical determination and must be determined by an impairment evaluator after a claimant has reached maximum healing;

(b) must be based on the current edition of the Guides to Evaluation of Permanent Impairment published by the American medical association; and

(c) must be expressed as a percentage of the whole person.

(2) A claimant or insurer, or both, may obtain an impairment rating from an evaluator who is a medical doctor or from an evaluator who is a chiropractor if the injury falls within the scope of chiropractic practice. If the claimant and insurer cannot agree upon the rating, the mediation procedure in part 24 of this chapter must be followed.

(3) An evaluator must be a physician licensed under Title 37, chapter 3, except if the claimant's treating physician is a chiropractor, the evaluator may be a chiropractor who is certified as an evaluator under chapter 12.

(4) Disputes over impairment ratings are not subject to 39-71-605.

History: En. Sec. 24, Ch. 464, L. 1987; amd. Sec. 2, Ch. 161, L. 1989; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 7, Ch. 558, L. 1991.

39-71-712. Temporary partial disability benefits. (1) If, prior to maximum healing, an injured worker has a physical restriction and is approved to return to a modified or alternative employment that the worker is able and qualified to perform and the worker suffers an actual wage loss as a result of a temporary work restriction, the worker qualifies for temporary partial disability benefits.

(2) An insurer's liability for temporary partial disability must be the difference between the injured worker's average weekly wage received at the time of the injury, subject to a maximum of 40 hours a week, and the actual weekly wages earned during the period that the claimant is temporarily partially disabled, not to exceed the injured worker's temporary total disability benefit rate.

(3) Temporary partial disability benefits are limited to a total of 26 weeks.

(4) A worker requalifies for temporary total disability benefits if the modified position is no longer available to the worker and the worker continues to be temporarily totally disabled as defined in 39-71-116.

(5) Temporary partial disability may not be considered an element of permanent partial disability and may not be credited against any permanent impairment or any permanent partial disability award or settlement achieved after the injured worker reaches maximum healing.

History: En. Sec. 6, Ch. 619, L. 1993.

Compiler's Comments

Effective Date: Section 30, Ch. 619, L. 1993, provided: "[This act] is effective July 1, 1993."

39-71-713 through 39-71-720 reserved.

39-71-721. Compensation for injury causing death — limitation. (1) (a) If an injured employee dies and the injury was the proximate cause of such death, then the beneficiary of the deceased is entitled to the same compensation as though the death occurred immediately following the injury. A beneficiary's eligibility for benefits commences after the date of death, and the benefit level is established as set forth in subsection (2).

(b) The insurer is entitled to recover any overpayments or compensation paid in a lump sum to a worker prior to death but not yet recouped. The insurer shall recover such payments from the beneficiary's biweekly payments as provided in 39-71-741(5).

(2) To beneficiaries as defined in 39-71-116(3)(a) through (3)(d), weekly compensation benefits for an injury causing death are 66 2⁄3% of the decedent's wages. The maximum weekly compensation benefit may not exceed the state's average weekly wage at the time of injury. The minimum weekly compensation benefit is 50% of the state's average weekly wage, but in no event may it exceed the decedent's actual wages at the time of his death.

(3) To beneficiaries as defined in 39-71-116(3)(e) and (3)(f), weekly benefits must be paid to the extent of the dependency at the time of the injury, subject to a maximum of 66 2⁄3% of the decedent's wages. The maximum weekly compensation may not exceed the state's average weekly wage at the time of injury.

(4) If the decedent leaves no beneficiary as defined in 39-71-116, a lump-sum payment of $3,000 must be paid to the decedent's surviving parent or parents.

(5) If any beneficiary of a deceased employee dies, the right of such beneficiary to compensation under this chapter ceases. Death benefits must be paid to a surviving spouse for 500 weeks subsequent to the date of the deceased employee's death or until the spouse's remarriage, whichever occurs first. After benefit payments cease to a surviving spouse, death benefits must be paid to beneficiaries, if any, as defined in 39-71-116(3)(b) through (3)(d).

(6) In all cases, benefits must be paid to beneficiaries, as defined in 39-71-116.

(7) Benefits paid under this section may not be adjusted for cost of living as provided in 39-71-702.

(8) Notwithstanding subsections (2) and (3), beginning July 1, 1987, through June 30, 1991, the maximum weekly compensation benefits for injury causing death may not exceed the state's average weekly wage of $299 established July 1, 1986. Beginning July 1, 1987, through June 30, 1991, the minimum weekly compensation for injury causing death shall be $149.50, which is 50% of the state's average weekly wage established July 1, 1986, but in no event may it exceed the decedent's actual wages at the time of death.

History: (1)En. Sec. 12, Ch. 96, L. 1915; re-en. Sec. 2905, R.C.M. 1921; re-en. Sec. 2905, R.C.M. 1935; amd. Sec. 15, Ch. 23, L. 1975; Sec. 92-608, R.C.M. 1947; (2) thru (6)Ap. p. 92-704.1 by Sec. 1, Ch. 203, L. 1973; amd. Sec. 2, Ch. 269, L. 1974; amd. Sec. 1, Ch. 270, L. 1974; amd. Sec. 2, Ch. 272, L. 1974; Sec. 92-704.1, R.C.M. 1947; Ap. p. Sec. 7, Ch. 96, L. 1915; re-en. Sec. 2892, R.C.M. 1921; re-en. Sec. 2892, R.C.M. 1935; amd. Sec. 10, Ch. 23, L. 1975; Sec. 92-502, R.C.M. 1947; R.C.M. 1947, 92-704.1, 92-502, 92-608(1); amd. Sec. 67, Ch. 197, L. 1979; amd. Sec. 29, Ch. 464, L. 1987; amd. Sec. 8, Ch. 9, Sp. L. June 1989; amd. Sec. 6, Ch. 480, L. 1991.

Cross-References

"Average weekly wage" defined, 39-71-116.

"Beneficiary" defined, 39-71-116.

"Husband" or "widower" defined, 39-71-116.

"Wages" defined, 39-71-116.

"Wife" or "widow" defined, 39-71-116.

"Employee" defined, 39-71-118.

"Injury" or "injured" defined, 39-71-119.

39-71-722. Who constitutes beneficiary to be determined as of date of accident. The question as to who constitutes a beneficiary shall be determined as of the date of the happening of the accident to the employee, whether death shall immediately result therefrom or not.

History: En. Sec. 12, Ch. 96, L. 1915; re-en. Sec. 2905, R.C.M. 1921; re-en. Sec. 2905, R.C.M. 1935; amd. Sec. 15, Ch. 23, L. 1975; R.C.M. 1947, 92-608(3).

Cross-References

"Beneficiary" defined, 39-71-116.

"Employee" defined, 39-71-118.

39-71-723. How compensation to be divided among beneficiaries. Compensation due to beneficiaries shall be paid to the surviving spouse, if any, or if none, then divided equally among or for the benefit of the children. In cases where beneficiaries are a surviving spouse and stepchildren of such spouse, the compensation shall be divided equally among all beneficiaries. Compensation due to beneficiaries as defined in 39-71-116(3)(e) and (3)(f), where there is more than one, shall be divided equitably among them, and the question of dependency and amount thereof shall be a question of fact for determination by the department.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2919, R.C.M. 1921; amd. Sec. 15, Ch. 121, L. 1925; re-en. Sec. 2919, R.C.M. 1935; amd. Sec. 4, Ch. 213, L. 1945; amd. Sec. 7, Ch. 235, L. 1947; amd. Sec. 7, Ch. 253, L. 1955; amd. Sec. 1, Ch. 205, L. 1973; amd. Sec. 3, Ch. 269, L. 1974; R.C.M. 1947, 92-708(part); amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 7, Ch. 480, L. 1991.

Cross-References

"Division" defined, 39-71-116.

39-71-724. Payment of compensation to beneficiary not a resident of United States. (1) Before payment of compensation to a beneficiary not residing within the United States, satisfactory proof of such relationship as to constitute a beneficiary under this chapter shall be furnished by such beneficiary, duly authenticated under seal of an officer of a court of law in the country where such beneficiary resides, at such times and in such manner as may be required by the department. Such proof shall be conclusive as to the identity of such beneficiary, and any other claim of any other person to any such compensation shall be barred from and after the filing of such proof.

(2) Payment of compensation to a beneficiary not residing within the United States may be made to any plenipotentiary or consul or consular agent within the United States representing the country in which such nonresident beneficiary resides, and the written receipt of such plenipotentiary or consul or consular agent shall acquit the employer, the insurer, or the department, as the case may be.

History: (1)En. Sec. 8, Ch. 96, L. 1915; re-en. Sec. 2896, R.C.M. 1921; re-en. Sec. 2896, R.C.M. 1935; amd. Sec. 11, Ch. 23, L. 1975; Sec. 92-506, R.C.M. 1947; (2)En. Sec. 9, Ch. 96, L. 1915; re-en. Sec. 2897, R.C.M. 1921; re-en. Sec. 2897, R.C.M. 1935; amd. Sec. 12, Ch. 23, L. 1975; Sec. 92-507, R.C.M. 1947; R.C.M. 1947, 92-506, 92-507; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

"Beneficiary" defined, 39-71-116.

"Division" defined, 39-71-116.

"Insurer" defined, 39-71-116.

"Employer" defined, 39-71-117.

39-71-725. Payment of burial expense. There shall be paid, in case of the death of an employee, which death is the result of an accidental injury arising out of the employment and happening in the course of the employment, the reasonable burial expenses of the employee, not exceeding $1,400, and such payment is not a part of the compensation which might be paid but is a benefit in addition to and separate and apart from compensation.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 2, Ch. 196, L. 1921; re-en. Sec. 2916, R.C.M. 1921; amd. Sec. 13, Ch. 121, L. 1925; re-en. Sec. 2916, R.C.M. 1935; amd. Sec. 1, Ch. 128, L. 1943; amd. Sec. 1, Ch. 213, L. 1945; amd. Sec. 6, Ch. 38, L. 1953; amd. Sec. 5, Ch. 234, L. 1957; amd. Sec. 1, Ch. 194, L. 1974; R.C.M. 1947, 92-705; amd. Sec. 7, Ch. 21, L. 1981.

Cross-References

"Employee" defined, 39-71-118.

"Injury" or "injured" defined, 39-71-119.

39-71-726. No compensation after death where death not result of injury. If the employee shall die from some cause other than the injury, there shall be no liability for compensation after his death.

History: En. Sec. 12, Ch. 96, L. 1915; re-en. Sec. 2905, R.C.M. 1921; re-en. Sec. 2905, R.C.M. 1935; amd. Sec. 15, Ch. 23, L. 1975; R.C.M. 1947, 92-608(2).

Cross-References

"Employee" defined, 39-71-118.

"Injury" or "injured" defined, 39-71-119.

39-71-727. Payment for prescription drugs — limitations. (1) For payment of prescription drugs, an insurer is liable only for the purchase of generic-name drugs if the generic-name product is the therapeutic equivalent of the brand-name drug prescribed by the physician, unless the generic-name drug is unavailable.

(2) If an injured worker prefers a brand-name drug, the worker may pay directly to the pharmacist the difference in the reimbursement rate between the brand-name drug and the generic-name product, and the pharmacist may only bill the insurer for the reimbursement rate of the generic-name drug.

(3) The pharmacist may bill only for the cost of the generic-name product on a signed itemized billing, except if purchase of the brand-name drug is allowed as provided in subsection (1).

(4) When billing for a brand-name drug, the pharmacist shall certify that the generic-name drug was unavailable.

(5) Reimbursement rates payable by an insurer subject to an agreement pursuant to 39-71-1102 are limited to the average wholesale price of the product at the time of dispensing, plus a dispensing fee not to exceed $5.50 per product.

(6) The pharmacist may not dispense more than a 30-day supply at any one time.

(7) For purposes of this section, average wholesale prices must be updated weekly.

(8) For purposes of this section, the terms "brand name", "drug product", and "generic name" have the same meaning as provided in 37-7-502.

(9) An insurer may not require a worker receiving benefits under this chapter to obtain medications from an out-of-state mail service pharmacy.

History: En. Sec. 2, Ch. 131, L. 1991; amd. Sec. 4, Ch. 628, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 628 near end of (1), after "unless", deleted "the physician specifies no substitutions or"; in (2), in two places, substituted "reimbursement rate" for "cost"; in (4), before "generic-name", deleted "physician specified no substitutions or that the"; inserted (5) limiting certain rates to the average wholesale price; inserted (6) limiting dispensation to a 30-day supply; inserted (7) requiring update of average wholesale prices; and inserted (9) providing that a worker not be required to obtain medications from an out-of-state mail service pharmacy. Amendment effective July 1, 1993.

Cross-References

"Injury" or "injured" defined, 39-71-119.

39-71-728 through 39-71-735 reserved.

39-71-736. Compensation — from what date paid. (1) (a) No compensation may be paid for the first 48 hours or 6 days' loss of wages, whichever is less, that the claimant is totally disabled and unable to work due to an injury. A claimant is eligible for compensation starting with the 7th day.

(b) However, separate benefits of medical and hospital services must be furnished from the date of injury.

(2) For the purpose of this section, except as provided in subsection (3), an injured worker is not considered to be entitled to compensation benefits if the worker is receiving sick leave benefits, except that each day for which the worker elects to receive sick leave counts 1 day toward the 6-day waiting period.

(3) Augmentation of temporary total disability benefits with sick leave by an employer pursuant to a collective bargaining agreement may not disqualify a worker from receiving temporary total disability benefits.

(4) Receipt of vacation leave by an injured worker may not affect the worker's eligibility for temporary total disability benefits.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 4, Ch. 196, L. 1921; re-en. Sec. 2918, R.C.M. 1921; amd. Sec. 3, Ch. 177, L. 1929; re-en. Sec. 2918, R.C.M. 1935; amd. Sec. 3, Ch. 213, L. 1945; amd. Sec. 5, Ch. 7, L. 1949; amd. Sec. 1, Ch. 144, L. 1969; amd. Sec. 18, Ch. 23, L. 1975; amd. Sec. 45, Ch. 535, L. 1975; R.C.M. 1947, 92-707; amd. Sec. 9, Ch. 103, L. 1979; amd. Sec. 30, Ch. 464, L. 1987; amd. Sec. 6, Ch. 333, L. 1989; amd. Sec. 18, Ch. 619, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 619 in (2), near beginning after "section", inserted exception clause; inserted (3) relating to augmentation of temporary total disability benefits with sick leave; and inserted (4) relating to effect of vacation leave on eligibility for benefits. Amendment effective July 1, 1993.

Cross-References

"Wages" defined, 39-71-116.

"Injury" or "injured" defined, 39-71-119.

39-71-737. Compensation to run consecutively — exceptions. Compensation shall run consecutively and not concurrently, and payment shall not be made for two classes of disability over the same period except that impairment awards and auxiliary rehabilitation benefits may be paid concurrently with other classes of benefits, and wage supplement and partial rehabilitation benefits may be paid concurrently.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2919, R.C.M. 1921; amd. Sec. 15, Ch. 121, L. 1925; re-en. Sec. 2919, R.C.M. 1935; amd. Sec. 4, Ch. 213, L. 1945; amd. Sec. 7, Ch. 235, L. 1947; amd. Sec. 7, Ch. 253, L. 1955; amd. Sec. 1, Ch. 205, L. 1973; amd. Sec. 3, Ch. 269, L. 1974; R.C.M. 1947, 92-708(part); amd. Sec. 2, Ch. 374, L. 1985; amd. Sec. 1, Ch. 502, L. 1985; amd. Sec. 31, Ch. 464, L. 1987.

39-71-738. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2923, R.C.M. 1921; amd. Sec. 5, Ch. 177, L. 1929; re-en. Sec. 2923, R.C.M. 1935; R.C.M. 1947, 92-712; amd. Sec. 68, Ch. 397, L. 1979.

39-71-739. Compensation in case of changes in degree of injury. If aggravation, diminution, or termination of disability takes place or is discovered after the rate of compensation is established or compensation is terminated in any case where the maximum payments for disabilities as provided in this chapter are not reached, adjustments may be made to meet such changed conditions by increasing, diminishing, or terminating compensation payments in accordance with the provisions of this chapter.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2924, R.C.M. 1921; amd. Sec. 6, Ch. 177, L. 1929; re-en. Sec. 2924, R.C.M. 1935; R.C.M. 1947, 92-713; amd. Sec. 69, Ch. 397, L. 1979.

39-71-740. Payments — how made in most cases. All payments of compensation as provided in this chapter shall be made at the end of each 2-week period, except as otherwise provided herein.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2925, R.C.M. 1921; re-en. Sec. 2925, R.C.M. 1935; amd. Sec. 9, Ch. 235, L. 1947; amd. Sec. 1, Ch. 197, L. 1961; R.C.M. 1947, 92-714.

39-71-741. Compromise settlements and lump-sum payments. (1) (a) Benefits may be converted in whole to a lump sum:

(i) if a claimant and an insurer dispute the initial compensability of an injury; and

(ii) if the claimant and insurer agree to a settlement.

(b) The agreement is subject to department approval. The department may disapprove an agreement under this section only if there is not a reasonable dispute over compensability.

(c) Upon approval, the agreement constitutes a compromise and release settlement and may not be reopened by the department.

(2) (a) If an insurer has accepted initial liability for an injury, permanent partial disability benefits may be converted in whole or in part to a lump-sum payment.

(b) The total of any lump-sum conversion in part that is awarded to a claimant prior to the claimant's final award may not exceed the anticipated award under 39-71-703 or $20,000, whichever is less.

(c) An agreement is subject to department approval. The department may disapprove an agreement only if the department determines that the settlement amount is inadequate. If disapproved, the department shall set forth in detail the reasons for disapproval.

(d) Upon approval, the agreement constitutes a compromise and release settlement and may not be reopened by the department.

(3) Permanent total disability benefits may be converted in whole or in part to a lump sum. The total of all lump-sum conversions in part that are awarded to a claimant may not exceed $20,000. A conversion may be made only upon the written application of the injured worker with the concurrence of the insurer. Approval of the lump-sum payment rests in the discretion of the department. The approval or award of a lump-sum payment by the department or court must be the exception. It may be given only if the worker has demonstrated financial need that:

(a) relates to:

(i) the necessities of life;

(ii) an accumulation of debt incurred prior to the injury; or

(iii) a self-employment venture that is considered feasible under criteria set forth by the department; or

(b) arises subsequent to the date of injury or arises because of reduced income as a result of the injury.

(4) Any lump-sum conversion of benefits under subsection (3) must be converted to present value using the rate prescribed under subsection (5)(b).

(5) (a) An insurer may recoup any lump-sum payment amortized at the rate established by the department, prorated biweekly over the projected duration of the compensation period.

(b) The rate adopted by the department must be based on the average rate for United States 10-year treasury bills in the previous calendar year, rounded to the nearest whole number.

(c) If the projected compensation period is the claimant's lifetime, the life expectancy must be determined by using the most recent table of life expectancy as published by the United States national center for health statistics.

(6) Subject to the other provisions of this section, the department has full power, authority, and jurisdiction to allow, approve, or condition compromise settlements for any type of benefits provided for under this chapter or lump-sum payments agreed to by workers and insurers. All such compromise settlements and lump-sum payments are void without the approval of the department. Approval by the department must be in writing. The department shall directly notify a claimant of a department order approving or denying a claimant's compromise or lump-sum payment.

(7) A dispute between a claimant and an insurer regarding the conversion of biweekly payments into a lump-sum is considered a dispute, for which a mediator and the workers' compensation court have jurisdiction to make a determination. If an insurer and a claimant agree to a compromise and release settlement or a lump-sum payment but the department disapproves the agreement, the parties may request the workers' compensation court to review the department's decision.

History: **En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 9, Ch. 100, L. 1919; re-en. Sec. 2926, R.C.M. 1921; re-en. Sec. 2926, R.C.M. 1935; amd. Sec. 1, Ch. 225, L. 1951; amd. Sec. 8, Ch. 234, L. 1957; amd. Sec. 2, Ch. 197, L. 1961; amd. Sec. 1, Ch. 9, L. 1975; amd. Sec. 1, Ch. 11, L. 1975; amd. Sec. 19, Ch. 23, L. 1975; R.C.M. 1947, 92-715; amd. Sec. 3, Ch. 63, L. 1979; amd. Sec. 1, Ch. 471, L. 1985; amd. Sec. 32, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 6, Ch. 574, L. 1991.**

Cross-References

"Beneficiary" defined, 39-71-116.
"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.
"Order" defined, 39-71-116.

39-71-742. Who may receive payment. (1) Where payment is due to a child under 18 years of age or to a person adjudged incompetent, the same shall be made to the parent or to the duly appointed guardian, as the case may be, and the written receipt of such parent or guardian shall acquit the employer, the insurer, or department, as the case may be, of further liability.

(2) In other cases, payment shall be made to the person entitled thereto or to his duly authorized representative.

History: **En. Sec. 9, Ch, 96, L. 1915; re-en. Sec. 2898, R.C.M. 1921; amd. Sec. 8, Ch. 121, L. 1925; re-en. Sec. 2898, R.C.M. 1935; amd. Sec. 13, Ch. 23, L. 1975; R.C.M. 1947, 92-508; amd. Sec. 64, Ch. 613, L. 1989.**

Cross-References

"Child" defined, 39-71-116.
"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.
"Employer" defined, 39-71-118.

39-71-743. Assignment or attachment of payments. (1) No payments under this chapter shall be assignable, subject to attachment or garnishment, or be held liable in any way for debts, except:

(a) as provided in 71-3-1118; or

(b) a portion of any lump-sum award or periodic payment to pay a monetary obligation for current or past-due child support, subject to the limitations in subsection (2), whenever the support obligation is established by order of a court of competent jurisdiction or by order rendered in an administrative process authorized by state law.

(2) Payments under this chapter are subject to assignment, attachment, or garnishment for child support as follows:

(a) for any periodic payment, an amount up to the percentage amount established in the guidelines promulgated by the department of social and rehabilitation services pursuant to 40-5-209; or

(b) for any lump-sum award, an amount up to that portion of the award that is approved for payment on the basis of a past-due child support obligation.

(3) After determination that the claim is covered under the Workers' Compensation Act or Occupational Disease Act of Montana, the liability for payment of the claim is the responsibility of the appropriate workers' compensation insurer. Except as provided in 39-71-704(7), a fee or charge is not payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2927, R.C.M. 1921; re-en. Sec. 2927, R.C.M. 1935; R.C.M. 1947, 92-801; amd. Sec. 3, Ch. 496, L. 1983; amd. Sec. 1, Ch. 485, L. 1987; amd. Sec. 19, Ch. 702, L. 1989; amd. Sec. 14, Ch. 628, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 628 at beginning of second sentence of (3) inserted exception clause; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Property exempt from execution without limitation — exceptions, 25-13-608.

39-71-744. Benefits not due while claimant is incarcerated — exceptions. (1) Except as provided in subsection (2), a claimant is not eligible for disability or rehabilitation compensation benefits while the claimant is incarcerated in a correctional institution, such as the Montana state prison or the Montana women's correctional center, as the result of conviction of a felony. The insurer remains liable for medical benefits. A time limit on benefits otherwise provided in this chapter is not extended due to a period of incarceration.

(2) A person who is employed while participating in a prerelease center program or a diversionary program is eligible for temporary total benefits as provided in 39-71-701 and medical benefits for a work-related injury received while participating in a prerelease center program or a diversionary program. Other disability or rehabilitation benefits are not payable while the worker is participating in a prerelease center. This subsection does not prohibit the reinstatement of other benefits upon release from incarceration, nor does it apply to an employee performing community service described in 39-71-118(1)(f).

History: En. Sec. 28, Ch. 464, L. 1987; amd. Sec. 1, Ch. 457, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 457 at beginning of first sentence of (1) inserted exception clause and near middle, after "incarcerated", inserted "in a correctional institution, such as the Montana state prison or the Montana women's correctional center"; inserted (2) extending benefits to certain inmates employed while participating in prerelease center or diversionary programs; and made minor changes in style.

Code Commissioner Change: In (1) the Code Commissioner deleted a reference to the Swan River Forest Camp because Ch. 579, L. 1993, deleted the Swan River Forest Camp as a separate institution. Authority for the change is found in sec. 84, Ch. 10, L. 1993.

Part 8

Compensation for Occupational Deafness

39-71-801. Occupational deafness compensated as provided in part. Regardless of other definitions of injury and time limitations imposed by this chapter, compensation is awarded for occupational deafness as provided in this part.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(part); amd. Sec. 70, Ch. 397, L. 1979.

Cross-References

"Injury" defined, 39-71-119.

39-71-802. Definitions. (1) "Noise" means sound capable of producing occupational deafness.

(2) "Noisy employment" means employment in the performance of which an employee is subjected to noise.

(3) "Occupational deafness" means permanent partial or permanent total loss of hearing of one or both ears due to prolonged exposure to noise in employment.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(part).

Cross-References

"Employee" defined, 39-71-118.

39-71-803. Occupational deafness distinguished from traumatic loss of hearing. Occupational deafness as herein provided is distinguished from traumatic loss of hearing, which may be compensated under parts 7 and 10 of this chapter.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(8); amd. Sec. 33, Ch. 464, L. 1987.

Cross-References

"Occupational deafness" defined, 39-71-802.

39-71-804. Compensable loss of hearing confined to certain frequencies. Losses of hearing due to industrial noise for compensation purposes shall be confined to the frequencies of 500, 1,000, and 2,000 cycles per second. Loss of hearing ability for frequency tones above 2,000 cycles per second is not to be considered as constituting disability for hearing.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(1)(a).

Cross-References

"Noise" defined, 39-71-802.

39-71-805. Determining percent of hearing loss. (1) The percent of hearing loss, for purposes of the determination of compensation claims for occupational deafness, shall be calculated as the average in decibels of the thresholds of hearing for the frequencies of 500, 1,000, and 2,000 cycles per second. Pure tone air conduction audiometric instruments, approved by nationally recognized authorities in this field, shall be used for measuring hearing loss. If the losses of hearing average 25 decibels or less in the three frequencies, as measured under ISO Standard 1964, such losses of hearing shall not then constitute any compensable hearing disability. If the losses of hearing average 92 decibels or more in the three frequencies, as measured under ISO Standard 1964, then the same shall constitute and be total or 100% compensable hearing loss.

(2) In measuring hearing impairment, the lowest measured losses in each of the three frequencies shall be added together and divided by three to determine the average decibel loss. For every decibel of loss exceeding 25 decibels, an allowance of 1 1/2% shall be made up to the maximum of 100%, which is reached at 92 decibels.

(3) In determining the binaural percentage of loss, the percentage of impairment in the better ear shall be multiplied by five. The resulting figure shall be added to the percentage of impairment in the poorer ear and the sum of the two divided by six. The final percentage shall be representative of the binaural hearing impairment.

(4) Before determining the percentage of hearing impairment, in order to allow for the average amount of hearing loss from nonoccupational causes found in the population at any given age, there shall be deducted from the total average decibel loss one-half decibel for each year of the employee's age over 40 at the time of last exposure to industrial noise.

(5) No consideration shall be given to the question of whether or not the ability of an employee to understand speech is improved by the use of a hearing aid.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(1)(b) thru (f).

Cross-References

"Order" defined, 39-71-116.

"Year" defined, 39-71-116.

"Employee" defined, 39-71-118.

"Noise" defined, 39-71-802.

"Occupational deafness" defined, 39-71-802.

39-71-806. Disability payments not payable for temporary hearing loss due to prolonged exposure to noise. No benefits shall be payable for temporary total or temporary partial disability under this part for loss of hearing due to prolonged exposure to noise.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(2).

Cross-References

"Noise" defined, 39-71-802.

39-71-807. Compensation for wage loss where employee transferred due to occupational deafness. An employee who because of occupational deafness is transferred by his employer to other employment and thereby sustains actual wage loss must be compensated at the rate provided in 39-71-703, not exceeding $3,500 in the aggregate from all employers. "Time of injury", "incurred such injury", or "date of injury" in such case is the date of wage loss.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(3); amd. Sec. 71, Ch. 397, L. 1979.

Cross-References

"Employer" defined, 39-71-117.
"Employee" defined, 39-71-118.
"Injury" or "injured" defined, 39-71-119.
"Occupational deafness" defined, 39-71-802.

39-71-808. Compensation for occupational deafness. (1) Subject to the limitations herein contained, there shall be payable:

(a) for total occupational deafness of one ear, 40 weeks of compensation;

(b) for total occupational deafness of both ears, 200 weeks of compensation; and

(c) for partial occupational deafness, compensation shall bear such relation to that named herein as disabilities bear to the maximum disabilities herein provided.

(2) In cases covered by this section, "time of injury", "incurred such injury", or "date of injury" shall be exclusively the date of occurrence of any of the following events to an employee:

(a) transfer because of occupational deafness to nonnoisy employment by an employer whose employment has caused occupational deafness;

(b) retirement;

(c) termination of the employer-employee relationship;

(d) layoff provided the layoff is complete and continuous for 1 year.

(3) No claim under this section shall be filed, however, until 6 consecutive months of removal from noisy employment after the time of injury, except, that under subsection (2)(d), such 6 consecutive months period may commence within the last 6 months of layoff.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(4).

Cross-References

"Employer" defined, 39-71-117.
"Employee" defined, 39-71-118.
"Injury" or "injured" defined, 38-71-119.
"Noisy employment" defined, 39-71-802.
"Occupational deafness" defined, 39-71-802.

39-71-809. Liability of employer for occupational deafness. An employer shall become liable for the entire occupational deafness to which his employment has contributed; but if previous deafness is established by hearing test or other competent evidence, whether or not the employee was exposed to noise within the 6 months preceding such test, he shall not be liable for previous loss so established nor shall he be liable for any loss for which compensation has previously been paid or awarded.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(9).

Cross-References

"Employer" defined, 39-71-117.
"Employee" defined, 39-71-118.
"Noise" defined, 39-71-802.
"Occupational deafness" defined, 39-71-802.

39-71-810. Employee to have worked ninety days for employer from whom compensation claimed. No payment shall be made to an employee under this part unless he shall have worked in noisy employment for a total period of at least 90 days for the employer from whom he claims compensation.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(6).

Cross-References
"Employer" defined, 39-71-117.
"Employee" defined, 39-71-118.
"Noisy employment" defined, 39-71-802.

39-71-811. Minimum exposure and noise intensity level required. No claim shall be filed, however, unless the employee is exposed 8 hours daily and for a period of at least 90 days as above required to noise intensity levels above 90 decibels.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(10).

Cross-References
"Employee" defined, 39-71-118.
"Noise" defined, 39-71-802.

39-71-812. Limitation on amount of compensation payable to employee under part. Any amount paid to an employee under this part by an employer shall be credited against compensation payable by any employer to such employee for occupational deafness under 39-71-807 and 39-71-808. No employee shall in the aggregate receive greater compensation from any or all employers for occupational deafness than that provided in this part for total occupational deafness.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(7).

Cross-References
"Employer" defined, 39-71-117.
"Employee" defined, 39-71-118.
"Occupational deafness" defined, 39-71-802.

39-71-813. Limitation provisions applicable — when provisions begin to run. The limitation provisions in this chapter control claims arising under this part. Such provisions run from the first date upon which claim may be filed or from the date of subsequent death, provided that no claim may accrue to any dependent unless an award has been issued or liability admitted.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(5); amd. Sec. 72, Ch. 397, L. 1979.

Part 9

Subsequent Injury Received by Vocationally Handicapped

39-71-901. Definitions. As used in this part, the following definitions apply:

(1) "Certificate" means documentation issued by the department to an individual who is vocationally handicapped.

(2) "Fund" means the subsequent injury fund.

(3) "Vocationally handicapped" means a person who has a medically certifiable permanent impairment which is a substantial obstacle to obtaining employment or to obtaining reemployment if the employee should become unemployed, considering such factors as the person's age, education, training, experience, and employment rejection.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(1); amd. Sec. 10, Ch. 103, L. 1979; amd. Sec. 73, Ch. 397, L. 1979; amd. Sec. 24, Ch. 613, L. 1989.

39-71-902. Fund to receive payment from insurer for each death under chapter — assessment of insurers. (1) In every case of the death of an employee under this chapter, the insurer shall pay to the fund the sum of $1,000. In addition, the department may assess every insurer an amount not to exceed 5% of the compensation paid in Montana in the preceding fiscal year. The assessment must be transmitted annually to the subsequent injury fund by the employer or insurer. The cost of administration of the fund must be paid out of money in the fund.

(2) When, in the judgment of the department, the amount of money in the subsequent injury fund is such that there is a surplus above and beyond projected liabilities and administrative costs, the department may at its discretion suspend or reduce further collection of assessments for a period of time determined by the department.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part); amd. Sec. 74, Ch. 397, L. 1979; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 8, Ch. 555, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 555 inserted last sentence of (1) that read: "The cost of administration of the fund must be paid out of money in the fund"; and in (2), after "liabilities", inserted "and administrative costs". Amendment effective July 1, 1993.

Cross-References

"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.
"Employer" defined, 39-71-117.
"Employee" defined, 39-71-118.
"Fund" defined, 39-71-901.

39-71-903. Procedure and practice. When a vocationally handicapped person receives a personal injury, the procedure and practice provided in this chapter applies to all proceedings under this part, except where specifically otherwise provided herein.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part); amd. Sec. 75, Ch. 397, L. 1979.

Cross-References

"Vocationally handicapped" defined, 39-71-901.

39-71-904. Rules for certification. The department shall promulgate rules for certification of vocationally handicapped persons.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(4); amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.
"Division" defined, 39-71-116.
"Vocationally handicapped" defined, 39-71-901.

39-71-905. Certification as vocationally handicapped. A person who wishes to be certified as vocationally handicapped for purposes of this part shall apply to the department on forms furnished by the department. The department shall conduct an investigation and shall issue a certificate to a person who, in the department's discretion, meets the requirements for vocationally handicapped certification. A person shall apply for certification before employment or within 60 days after he becomes employed or reemployed and before an injury occurs that is covered by this part. The certification is effective on the date of employment or reemployment. Failure to apply before employment or within 60 days after employment or reemployment precludes the employer from the protection and benefits of this part.

History: **En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(2); amd. Sec. 11, Ch. 103, L. 1979; amd. Sec. 1, Ch. 151, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 8, Ch. 558, L. 1991.**

Cross-References

"Division" defined, 39-71-116.

"Employer" defined, 39-71-117.

"Employee" defined, 39-71-118.

"Certificate" defined, 39-71-901.

"Vocationally handicapped" defined, 39-71-901.

39-71-906. Employer hiring or retaining certified vocationally handicapped person to file information with department — effect of failure to file. Upon commencement of employment or retention in employment of a certified vocationally handicapped person, the employer shall submit to the department, on forms furnished by the department, all pertinent information requested by the department. The department shall acknowledge receipt of the information. Failure to file the required information with the department within 60 days after the first day of the vocationally handicapped person's employment or retention in employment precludes the employer from the protection and benefits of this part unless the information is filed before an injury for which benefits are payable under this part.

History: **En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(3); amd. Sec. 12, Ch. 103, L. 1979; amd. Sec. 64, Ch. 613, L. 1989.**

Cross-References

Government employment preference for the handicapped, Title 39, ch. 30.

"Division" defined, 39-71-116.

"Employer" defined, 39-71-117.

"Injury" or "injured" defined, 39-71-119.

"Vocationally handicapped" defined, 39-71-901.

39-71-907. Certified vocationally handicapped person to be compensated for injury as provided by chapter — insurer liability for compensation limited — appropriation. (1) A person certified as vocationally handicapped who receives a personal injury arising out of and in the course of employment and resulting in death or disability must be paid compensation in the manner and to the extent provided in this chapter or, in case of death resulting from such injury, the compensation must be paid to the person's beneficiaries or dependents. The liability of the insurer for payment of medical and burial benefits as provided in this chapter is limited to those benefits arising from services rendered during the period of 104 weeks after the date of injury. The liability of the insurer for payment of benefits as provided in this chapter is limited to 104 weeks of compensation benefits actually paid. Thereafter, all compensation and the cost of all medical care and burial is the liability of the fund.

(2) The amounts necessary for the payment of benefits from this fund are statutorily appropriated, as provided in section 17-7-502, from this fund.

History: **En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(5); amd. Sec. 76, Ch. 397, L. 1979; amd. Sec. 1, Ch. 213, L. 1987; amd. Sec. 9, Ch. 555, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 555 inserted (2) statutorily appropriating amounts necessary to pay benefits; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

"Employer" defined, 39-71-117.

"Injury" or "injured" defined, 39-71-119.

"Vocationally handicapped" defined, 39-71-901.

39-71-908. Notification of fund of its potential liability under part — review by fund. Not less than 90 or more than 150 days before the expiration of 104 weeks after the date of injury, the insurer shall notify the fund whether it is likely that compensation may be payable beyond a period of 104 weeks after the date of the injury. The fund thereafter may review, at reasonable times, such information as the insurer has regarding the accident and the nature and extent of the injury and disability.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part); amd. Sec. 77, Ch. 397, L. 1979; amd. Sec. 25, Ch. 613, L. 1989.

Cross-References

"Employer" defined, 39-71-117.
"Injury" or "injured" defined, 39-71-119.
"Fund" defined, 39-71-901.

39-71-909. Effect of fund's failure to give notification of its intent to dispute liability — subsequent notification by fund authorized. If the fund does not notify the insurer of its intent to dispute the payment of compensation, medical, and burial benefits, the insurer shall continue to make payments on behalf of the fund and shall be reimbursed by the fund for all benefits paid in excess of the insurer's liability. However, at any time subsequent to 104 weeks after the date of injury, the fund may notify the insurer of a dispute as to payment of benefits. The liability of the fund to reimburse the insurer shall be suspended 30 days thereafter until the controversy is determined.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(7); amd. Sec. 2, Ch. 213, L. 1987.

Cross-References

"Employer" defined, 39-71-117.
"Injury" or "injured" defined, 39-71-119.
"Fund" defined, 39-71-901.

39-71-910. Procedure for resolving disputes as to liability under part. (1) If an employee was employed or retained in employment under the provisions of this part and a dispute or controversy arises as to payment of benefits or the liability therefor, the department shall hold a hearing and resolve all disputes. On motion made in writing by the insurer, the department shall join the fund as a party defendant.

(2) The department, within 5 days of the entry of an order joining the fund as a party defendant, shall give the fund written notice thereof not less than 20 days before the date of hearing and shall include the names of the employee and the insurer and the date of the alleged injury or disability. The fund named as a defendant has 10 days after the date of notification to file objections to being named as a party defendant. On the date of the hearing at which the liability of the parties is determined, the hearing examiner first shall hear arguments and take evidence concerning the joinder as party defendant. If the fund has filed timely objection and if argument and evidence warrant, the hearing examiner shall grant a motion to dismiss.

(3) At the time of the hearing, the insurer and fund may appear, cross-examine witnesses, give evidence, and defend both on the issue of liability of the insurer to the employee and on the issue of the liability of the fund.

(4) The hearing examiner shall make findings of fact and conclusions of law determining the respective liability of the insurer and the fund.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(9) thru (12); amd. Sec. 78, Ch. 397, L. 1979; amd. Secs. 26, 64, Ch. 613, L. 1989.

Cross-References

"Division" defined, 39-71-116.
"Order" defined, 39-71-116.
"Employer" defined, 39-71-117.
"Employee" defined, 39-71-118.
"Injury" or "injured" defined, 39-71-119.

"Fund" defined, 39-71-901.

39-71-911. Obligation to make payments on behalf of fund not an independent liability. The obligation imposed by this part on the insurer to make payments on behalf of the fund does not impose an independent liability on the insurer.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part); amd. Sec. 27, Ch. 613, L. 1989.

Cross-References

"Employer" defined, 39-71-117.

"Fund" defined, 39-71-901.

39-71-912. Reimbursement to be promptly made. After the right to reimbursement has been established, reimbursement payment shall be made promptly on a proper showing every 6 months.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part).

39-71-913. Payments by fund directly to persons entitled. If the insurer does not make the payments on behalf of the fund, the fund may make the payments directly to the persons entitled to the payments.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part); amd. Sec. 28, Ch. 613, L. 1989.

Cross-References

"Employer" defined, 39-71-117.

"Fund" defined, 39-71-901.

39-71-914. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part).

Part 10

Referral of Disabled Workers for Vocational Rehabilitation

39-71-1001. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 1, Ch. 21, L. 1961; amd. Sec. 1, Ch. 221, L. 1963; amd. Sec. 83, Ch. 23, L. 1975; R.C.M. 1947, 92-1401; amd. Sec. 79, Ch. 397, L. 1979.

39-71-1002. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 2, Ch. 21, L. 1961; amd. Sec. 84, Ch. 23, L. 1975; R.C.M. 1947, 92-1402.

39-71-1003. Eligibility for vocational rehabilitation expenses. (1) Upon certification by the department of social and rehabilitation services, a disabled worker may be paid vocational rehabilitation expenses from funds provided in 39-71-1004, in addition to benefits payable under the Workers' Compensation Act.

(2) The appeal process provided for in 53-7-106 is the exclusive remedy for an injured worker aggrieved in the receipt of vocational rehabilitation services provided by the department of social and rehabilitation services.

History: En. Sec. 3, Ch. 21, L. 1961; amd. Sec. 1, Ch. 363, L. 1971; R.C.M. 1947, 92-1403; amd. Sec. 80, Ch. 397, L. 1979; amd. Sec. 3, Ch. 374, L. 1985; amd. Sec. 35, Ch. 464, L. 1987; amd. Sec. 7, Ch. 574, L. 1991.

39-71-1004. Industrial accident rehabilitation account. (1) The payments provided in 39-71-1003 shall be made from the industrial accident rehabilitation account in the state special revenue fund. Payments to the account shall be made on or before July 1 of each year as follows:

(a) by each employer operating under the provisions of plan No. 1 of the Workers' Compensation Act, an amount to be assessed by the department, not exceeding 1% of the compensation paid to the employer's injured employees in Montana for the preceding fiscal year;

(b) by each insurer insuring employers under the provisions of plan No. 2 of the Workers' Compensation Act, an amount to be assessed by the department, not exceeding 1% of the compensation paid to injured employees of its insured in Montana during the preceding fiscal year;

(c) by the department, an amount to be determined by the department, not exceeding 1% of the compensation paid to injured employees in Montana from the industrial insurance expendable trust fund and the occupational disease expendable trust fund for the preceding fiscal year.

(2) Separate accounts of the amounts collected and disbursements made from the industrial accident rehabilitation account in the state special revenue fund shall be kept for each of the plans. If in any fiscal year the amount collected from the employers under any plan exceeds the amount of payments for employees of the employers under such plan, the assessment against the employers under such plan for the following year shall be reduced.

(3) The payments herein provided for shall be made to the department, which shall credit the sums paid to the industrial accident rehabilitation account which shall be in the custody of the state treasurer. Disbursements from the account shall be made after approval by the department of social and rehabilitation services and upon audit and approval by the department of administration.

(4) No part of the funds allocated or contributed as herein provided and contemplated shall be used in payment of administrative expenses of the department or department of social and rehabilitation services.

History: En. Sec. 7, Ch. 21, L. 1961; amd. Sec. 3, Ch. 221, L. 1963; amd. Sec. 85, Ch. 23, L. 1975; R.C.M. 1947, 92-1406; amd. Sec. 2, Ch. 283, L. 1983; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.
"Year" defined, 39-71-116.
Rehabilitation benefits, 39-71-2001.

39-71-1005. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 1, Ch. 123, L. 1979.

39-71-1006 through 39-71-1010 reserved.

39-71-1011. Definitions. As used in this chapter, the following definitions apply:

(1) "Board of rehabilitation certification" means the nonprofit, independent, fee-structured organization that is a member of the national commission for health certifying agencies and that is established to certify rehabilitation practitioners.

(2) "Disabled worker" means one who has a medically determined restriction resulting from a work-related injury that precludes the worker from returning to the job the worker held at the time of the injury.

(3) "Rehabilitation benefits" means benefits provided in 39-71-1003, 39-71-1025, and 39-71-2001.

(4) "Rehabilitation plan" means an individualized plan to assist a disabled worker in acquiring skills or aptitudes to return to work through job placement, on-the-job training, education, training, or specialized job modification.

(5) "Rehabilitation provider" means a rehabilitation counselor certified by the board for rehabilitation certification and designated by the insurer to the department or a department of social and rehabilitation services counselor when a worker has been certified by the department of social and rehabilitation services under 39-71-1003.

(6) "Rehabilitation services" consists of a program of evaluation, planning, and delivery of goods and services to assist a disabled worker to return to work.

History: En. Sec. 34, Ch. 464, L. 1987; amd. Sec. 2, Ch. 333, L. 1989; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 8, Ch. 574, L. 1991.

39-71-1012. Repealed. Sec. 14, Ch. 574, L. 1991.

History: En. Sec. 36, Ch. 464, L. 1987.

39-71-1013. Agreement between worker and insurer regarding option. A worker and an insurer may agree to a rehabilitation plan and file the agreement with the department.

History: En. Sec. 43, Ch. 464, L. 1987; amd. Sec. 9, Ch. 574, L. 1991.

39-71-1014. Rehabilitation services — required and provided by insurers and the department of social and rehabilitation services. (1) Rehabilitation services are required for disabled workers and may be initiated by:

(a) an insurer by designating a rehabilitation provider and notifying the department;

(b) the department by requiring the insurer to designate a rehabilitation provider; or

(c) a disabled worker through a request to the department. The department shall then require the insurer to designate a rehabilitation provider.

(2) Rehabilitation services provided under this part must be delivered:

(a) through a rehabilitation counselor certified by the board of rehabilitation certification;

(b) by a vocational rehabilitation counselor employed by the department of social and rehabilitation services; or

(c) by both.

(3) A disabled worker served by the department of social and rehabilitation services may receive only those vocational rehabilitation services as provided in Title 53, chapter 7, parts 1 and 2.

History: En. Sec. 37, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

39-71-1015 through 39-71-1019. Repealed. Sec. 14, Ch. 574, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

39-71-1015. En. Sec. 38, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

39-71-1016. En. Sec. 39, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

39-71-1017. En. Sec. 40, Ch. 464, L. 1987; amd. Sec. 9, Ch. 333, L. 1989; amd. Sec. 64, Ch. 613, L. 1989.

39-71-1018. En. Sec. 41, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

39-71-1019. En. Sec. 42, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 40, Ch. 16, L. 1991.

39-71-1020 through 39-71-1022 reserved.

39-71-1023. Repealed. Sec. 14, Ch. 574, L. 1991.

History: En. Sec. 44, Ch. 464, L. 1987; amd. Sec. 3, Ch. 333, L. 1989; amd. Sec. 64, Ch. 613, L. 1989.

39-71-1024. Repealed. Sec. 14, Ch. 574, L. 1991.

History: En. Sec. 45, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 9, Ch. 9, Sp. L. June 1989.

39-71-1025. Auxiliary rehabilitation benefits. In addition to benefits otherwise provided in this chapter, separate benefits not exceeding a total of $4,000 may be paid by the insurer for reasonable travel and relocation expenses used to:

(1) search for new employment;

(2) return to work but in a new location;

(3) implement a rehabilitation plan that has been filed with the department; and

(4) attend an on-the-job training program.

History: En. Sec. 46, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 11, Ch. 574, L. 1991.

39-71-1026. Repealed. Sec. 14, Ch. 574, L. 1991.

History: En. Sec. 47, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

39-71-1027 through 39-71-1030 reserved.

39-71-1031. Exchange of information. The department of social and rehabilitation services, the insurer's designated rehabilitation provider, and the department shall provide to one another case information as necessary to carry out the purposes of this part.

History: En. Sec. 48, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

39-71-1032. Termination of benefits for noncooperation with rehabilitation provider — department hearing and appeal. (1) If an insurer believes a worker is refusing unreasonably to cooperate with the rehabilitation provider, the insurer, with 14 days' notice to the worker and department on a form approved by the department, may terminate any rehabilitation benefits the worker is receiving under this part until the worker cooperates.

(2) The worker may contest the insurer's termination of benefits by filing a written exception to the department within 20 working days after the date of the 14-day notice. The worker or insurer may request a hearing before the department. The department shall hold a hearing within 30 days of receipt of the request. The department shall issue an order within 15 days of the hearing.

(3) If the worker prevails at a hearing before the department, it may award attorney fees and costs to the worker under 39-71-612.

(4) Within 30 days after the department mails its order to the party's last-known address, a party may appeal to the workers' compensation court.

History: En. Sec. 49, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 12, Ch. 574, L. 1991.

39-71-1033. Repealed. Sec. 14, Ch. 574, L. 1991.

History: En. Sec. 50, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

Part 11

Managed Care and Preferred Provider Organizations

Part Compiler's Comments

Effective Date: Section 18, Ch. 628, L. 1993, provided: "[This act] [39-71-1101 through 39-71-1109] is effective July 1, 1993."

39-71-1101. Choice of physician by worker — change of physician — receipt of care from managed care organization. (1) Subject to subsection (3), a worker may choose the initial treating physician within the state of Montana.

(2) Authorization by the insurer is required to change treating physicians. If authorization is not granted, the insurer shall direct the worker to a managed care organization, if any, or to a medical service provider who qualifies as a treating physician, who shall then serve as the worker's treating physician.

(3) A medical service provider who otherwise qualifies as a treating physician but who is not a member of a managed care organization may not provide treatment unless authorized by the insurer, if:

(a) the injury results in a total loss of wages for any duration;

(b) the injury will result in permanent impairment;

(c) the injury results in the need for a referral to another medical provider for specialized evaluation or treatment; or

(d) specialized diagnostic tests, including but not limited to magnetic resonance imaging, computerized axial tomography, or electromyography, are required.

(4) A worker whose injury is subject to the provisions of subsection (3) shall, unless otherwise authorized by the insurer, receive medical services from the managed care organization designated by the insurer, in accordance with 39-71-1104. The designated treating physician in the managed care organization then becomes the worker's treating physician. The insurer is not liable for medical services obtained otherwise, except that a worker may receive immediate emergency medical treatment for a compensable injury from a medical service provider who is not a member of a managed care organization.

History: En. Sec. 5, Ch. 628, L. 1993.

39-71-1102. Preferred provider organizations — establishment — limitations. In order to promote cost containment of medical care provided for in 39-71-704, development of preferred provider organizations by insurers is encouraged. Insurers may establish arrangements with suppliers of soft and durable medical goods and medical providers in addition to or in conjunction with managed care organizations. Workers' compensation insurers may contract with other entities to use the other entities' preferred provider organizations. After the date that a worker is given written notice by the insurer of a preferred provider, the insurer is not liable for charges from nonpreferred providers. This section does not prohibit the worker from choosing the initial treating physician under 39-71-1101(1).

History: En. Sec. 6, Ch. 628, L. 1993.

39-71-1103. Workers' compensation managed care. (1) A managed care system is a program organized to serve the medical needs of injured workers in an efficient and cost-effective manner by managing the delivery of medical services for a defined population of injured workers, pursuant to 39-71-1101, through appropriate health care professionals.

(2) The department shall develop criteria pursuant to 39-71-1105 for certification of managed care organizations. The department may adopt rules for certification of managed care organizations.

(3) Insurers may contract with certified managed care organizations for medical services for injured workers. A worker who is subject to managed care may choose from managed care organizations in the worker's community that have a contract with the insurer responsible for the worker's medical services.

History: En. Sec. 7, Ch. 628, L. 1993.

39-71-1104. Managed care organizations — notification. Workers who are subject to managed care must receive medical services in the manner prescribed in the contract. Each contract must comply with the certification requirements provided in 39-71-1105. Insurers who contract with a managed care organization for medical services shall give written notice to workers of eligible service providers and shall give notice of the manner of receiving medical services.

History: En. Sec. 8, Ch. 628, L. 1993.

39-71-1105. Managed care organizations — application — certification. (1) A health care provider, a group of medical service providers, or an entity with a managed care organization may make written application to the department to become certified under this section to provide managed care to injured workers for injuries that are covered under this chapter or for occupational diseases that are covered under the Occupational Disease Act of Montana. However, this section does not authorize an organization that is formed, owned, or operated by a workers' compensation insurer or self-insured employer other than a health care provider to become certified to provide managed care. When a health care provider, a group of medical service providers, or an entity with a managed care organization is establishing a managed care organization and independent physical therapy practices exist in the community, the managed care organization is encouraged to utilize independent physical therapists as part of the managed care organization if the independent physical therapists agree to abide by all the applicable requirements for a managed care organization set forth in this section, in rules established by the department, and in the provisions of a managed care plan for which certification is being sought.

(2) Each application for certification must be accompanied by an application fee if prescribed by the department. A certificate is valid for the period prescribed by the department, unless it is revoked or suspended at an earlier date.

(3) The department shall establish by rule the form for the application for certification and the required information regarding the proposed plan for providing medical services. The information includes but is not limited to:

(a) a list of names of each individual who will provide services under the managed care plan, together with appropriate evidence of compliance with any licensing or certification requirements for that individual to practice in the state;

(b) names of the individuals who will be designated as treating physicians and who will be responsible for the coordination of medical services;

(c) a description of the times, places, and manner of providing primary medical services under the plan;

(d) a description of the times, places, and manner of providing secondary medical services, if any, that the applicants wish to provide; and

(e) satisfactory evidence of the ability to comply with any financial requirements to ensure delivery of service in accordance with the plan that the department may require.

(4) The department shall certify a group of medical service providers or an entity with a managed care organization to provide managed care under a plan if the department finds that the plan:

(a) proposes to provide coordination of services that meet quality, continuity, and other treatment standards prescribed by the department and will provide all primary medical services that may be required by this chapter in a manner that is timely and effective for the worker;

(b) provides appropriate financial incentives to reduce service costs and utilization without sacrificing the quality of services;

(c) provides adequate methods of peer review and service utilization review to prevent excessive or inappropriate treatment, to exclude from participation in the plan those individuals who violate these treatment standards, and to provide for the resolution of any medical disputes that may arise;

(d) provides for cooperative efforts by the worker, the employer, the rehabilitation providers, and the managed care organization to promote an early return to work for the injured worker;

(e) provides a timely and accurate method of reporting to the department necessary information regarding medical and health care service cost and utilization to enable the department to determine the effectiveness of the plan;

(f) authorizes workers to receive medical treatment from a primary care physician who is not a member of the managed care organization but who maintains the worker's medical records and with whom the worker has a documented history of treatment, if that primary care physician agrees to refer the worker to the managed care organization for any specialized treatment, including physical therapy, that the worker may require and if that primary care physician agrees to comply with all the rules, terms, and conditions regarding services performed by the managed care organization. As used in this subsection (f), "primary care physician" means a physician who is qualified to be a treating physician and who is a family practitioner, a general practitioner, an internal medicine practitioner, or a chiropractor.

(g) complies with any other requirements determined by department rule to be necessary to provide quality medical services and health care to injured workers.

(5) The department shall refuse to certify or may revoke or suspend the certification of a health care provider, a group of medical service providers,

or an entity with a managed care organization to provide managed care if the department finds that:

(a) the plan for providing medical care services fails to meet the requirements of this section; and

(b) service under the plan is not being provided in accordance with the terms of a certified plan.

History: **En. Sec. 9, Ch. 628, L. 1993.**

39-71-1106. Compliance with medical treatment required — termination of compensation benefits for noncompliance. An insurer that provides 14 days' notice to the worker and the department may terminate any compensation benefits that the worker is receiving until the worker cooperates, if the insurer believes that the worker is unreasonably refusing:

(1) to cooperate with a managed care organization or treating physician;

(2) to submit to medical treatment recommended by the treating physician, except for invasive procedures; or

(3) to provide access to health care information to medical providers, the insurer, or an agent of the insurer.

History: **En. Sec. 10, Ch. 628, L. 1993.**

39-71-1107. Domiciliary care — requirements — evaluation. (1) Reasonable domiciliary care must be provided by the insurer:

(a) from the date the insurer knows of the employee's need for home medical services that results from an industrial injury;

(b) when the preponderance of credible medical evidence demonstrates that nursing care is necessary as a result of the accident and describes with a reasonable degree of particularity the nature and extent of duties to be performed;

(c) when the services are performed under the direction of the treating physician who, following a nursing analysis, prescribes the care on a form provided by the department;

(d) when the services rendered are of the type beyond the scope of normal household duties; and

(e) when subject to subsections (3) and (4), there is a means to determine with reasonable certainty the value of the services performed.

(2) When a worker suffers from a condition that requires domiciliary care, which results from the accident, and requires nursing care as provided for in Title 37, chapter 8, a licensed nurse shall provide the services.

(3) When a worker suffers from a condition that requires 24-hour care and that results from the accident but that requires domiciliary care other than as provided in Title 37, chapter 8, the care may be provided by a family member. The insurer's responsibility for reimbursement for the care is limited to no more than the daily statewide average medicaid reimbursement rate for the current fiscal year for care in a nursing home. The insurer is not responsible for respite care.

(4) Domiciliary care by a family member that is necessary for a period of less than 24 hours a day may not exceed the prevailing hourly wage, and the insurer is not liable for more than 8 hours of care per day.

History: **En. Sec. 11, Ch. 628, L. 1993.**

39-71-1108. Physician self-referral prohibition. Unless authorized by the insurer, a treating physician may not refer a claimant to a health care facility at which the physician does not directly provide care or services when the physician has an investment interest in the facility, unless there is a demonstrated need in the community for the facility and alternative financing is not available. The insurer or the claimant is not liable for charges incurred in violation of this section.

History: En. Sec. 12, Ch. 628, L. 1993.

39-71-1109. Medical advisory committees — composition — function. (1) The department shall organize committees of representatives from the following medical provider groups:

(a) physicians;
(b) surgeons;
(c) chiropractors;
(d) physical therapists;
(e) psychologists; and
(f) hospitals.

(2) Committees organized pursuant to this section shall assist the department in the development of utilization and treatment standards for treating injured workers.

(3) The department may seek recommendations for representatives from the state licensing boards governing the providers.

History: En. Sec. 13, Ch. 628, L. 1993.

Parts 12 through 14 reserved

Part 15

Montana Safety Culture Act

39-71-1501. *(Effective January 1, 1994)* **Short title.** Section 2-15-1708 and this part may be cited as the "Montana Safety Culture Act".

History: En. Sec. 1, Ch. 295, L. 1993.

Compiler's Comments

Effective Date: Section 16, Ch. 295, L. 1993, provided that this section is effective January 1, 1994.

39-71-1502. *(Effective January 1, 1994)* **Purpose.** The purpose of 2-15-1708 and this part is to reduce the incidence of occupational injury and illness by promoting safety in the workplace in order to control the costs of claims for workers' compensation insurance. The creation of a safety culture requires employers to provide training and education to make safety awareness part of the requirement for each worker's satisfactory job performance and requires the department to promote safety awareness for the public through the education and preparation of each student for entrance into the labor market. A reduction in workplace injuries, illnesses, and deaths through enhanced safety on the job benefits the public as well as the employers and the employees by lowering both financial and physical costs. Ensuring immunity to insurers in the provision of safety consultation services encourages and promotes safety in the workplace and improves the relationship between employers and employees.

History: En. Sec. 2, Ch. 295, L. 1993.

Compiler's Comments

Effective Date: Section 16, Ch. 295, L. 1993, provided that this section is effective January 1, 1994.

39-71-1503. *(Effective January 1, 1994)* **Safety consultation.** (1) As used in 2-15-1708 and this part, "safety consultation services" means assistance rendered by an insurer to advise and aid an insured employer in the identification, evaluation, and control of existing and potential accidental and occupational health problems. The services may be delivered in person, by mail, or by telephone, based upon need.

(2) Safety consultation services include but are not limited to:

(a) surveys consisting of onsite identification and subsequent evaluation of exposures relative to employees, materials, equipment, work methods, processes, and facilities;

(b) recommendations expressed in the form of communications to an insured employer, with reference to control of exposures to occupational accident, injury, or illness and to improvement of safety programs and systems;

(c) training programs, including aids, programs, and materials made available to assist in the control of exposures;

(d) consultations to advise insured employers relative to risk, exposure, and experience in the insured employer's business;

(e) accident analysis consisting of review of reported accidents to determine cause and trends; and

(f) industrial hygiene services, including recognition, evaluation, and control of chemical, physical, and biological exposures.

History: En. Sec. 3, Ch. 295, L. 1993.

Compiler's Comments

Effective Date: Section 16, Ch. 295, L. 1993, provided that this section is effective January 1, 1994.

39-71-1504. *(Effective January 1, 1994)* **Safety programs — educational activities.** (1) To promote health and safety in places of employment in this state:

(a) each public or private employer shall establish and administer a safety program in accordance with rules adopted by the department pursuant to 39-71-1505; and

(b) the department, relying upon the support and assistance of concerned private entities or other governmental agencies, shall produce and distribute material to the schools of Montana and provide guest speakers intended to:

(i) educate students about the necessity for safe work practices;

(ii) prepare students to embark on accident-free careers; and

(iii) disseminate information promoting the reduction and control of the rate of incidence of workplace injuries or occupational disease.

(2) An employer who employs temporary workers shall include those workers in the employer's safety program. A temporary services contractor

shall provide a safety program for employees not employed by other employers.

History: **En. Sec. 4, Ch. 295, L. 1993.**

Compiler's Comments

Effective Date: Section 16, Ch. 295, L. 1993, provided that this section is effective January 1, 1994.

39-71-1505. Rulemaking authority. The department shall adopt rules, including but not limited to rules that require:

(1) each employer to conduct an educational-based safety program, including but not limited to:

(a) a safety training program to provide:

(i) new employee general safety orientation;

(ii) job- or task-specific safety training; and

(iii) continuous refresher safety training, including periodic safety meetings;

(b) periodic hazard assessment, with corrective actions identified; and

(c) appropriate documentation of performance of the activities; and

(2) an employer of more than five employees to have a comprehensive and effective safety program, including but not limited to:

(a) a safety committee composed of employee and employer representatives that holds regularly scheduled meetings;

(b) procedures of reporting and investigating all work-related incidents, accidents, injuries, and illnesses; and

(c) policies and procedures that assign specific safety responsibilities and safety performance accountability.

History: **En. Sec. 5, Ch. 295, L. 1993.**

Compiler's Comments

Effective Date: Section 16, Ch. 295, L. 1993, provided that this section is effective July 1, 1993.

39-71-1506. *(Effective January 1, 1994)* **Notification of safety consultation services available by insurer.** To implement safety requirements, each insurer shall notify each insured employer of the type of safety consultation services available and the location where the safety consultation services may be requested.

History: **En. Sec. 6, Ch. 295, L. 1993.**

Compiler's Comments

Effective Date: Section 16, Ch. 295, L. 1993, provided that this section is effective January 1, 1994.

39-71-1507. *(Effective January 1, 1994)* **Safety consultation services — safety program as provision of insurance contract or agreement.** (1) Each insurer shall provide safety consultation services to each of its insured employers who request the assistance.

(2) The safety consultation services to be provided are within the discretion of the insurer but must include consideration of the hazard, experience, and size of the insured employer's operations.

(3) The insurer shall establish a system of priorities to use in responding to worksite safety consultation service requests, giving first priority to insured employers that have an unreasonably high actual or potential loss experience.

(4) Each insurer's insurance contract or agreement must require each insured employer to implement a safety program as part of the contract or agreement to provide workers' compensation coverage.

History: En. Sec. 7, Ch. 295, L. 1993.

Compiler's Comments

Effective Date: Section 16, Ch. 295, L. 1993, provided that this section is effective January 1, 1994.

39-71-1508. *(Effective January 1, 1994)* **Safety consultation services — insurer's exemption from civil liability — exceptions.** (1) The furnishing of or the failure to furnish safety consultation services related to, in connection with, or incidental to a workers' compensation insurance contract or agreement to provide workers' compensation coverage does not subject the insurer or its agents, employees, or service contractors to liability for damages from injury, loss, or death, whether direct or consequential, occurring as a result of any act or omission by any person in the course of providing safety consultation services.

(2) Subsection (1) does not apply:

(a) if the injury, loss, or death occurred during the actual performance of safety consultation services and was directly and proximately caused by the negligence of the insurer or its agents, employees, or service contractors;

(b) to any safety consultation services required to be performed under the provisions of a written service contract for which a specific charge is made and not incidental to a policy of insurance; or

(c) in an action against an insurer or its agents, employees, or service contractors for damages caused by the act or omission of the insurer or its agents, employees, or service contractors in which it is judicially determined that the act or omission constituted a crime or involved actual malice.

History: En. Sec. 9, Ch. 295, L. 1993.

Compiler's Comments

Effective Date: Section 16, Ch. 295, L. 1993, provided that this section is effective January 1, 1994.

Parts 16 through 19 reserved

Part 20

Rehabilitation Benefits

39-71-2001. Rehabilitation benefits. (1) An injured worker is eligible for rehabilitation benefits if:

(a) the injury results in permanent partial disability or permanent total disability as defined in 39-71-116;

(b) a physician certifies that the injured worker is physically unable to work at the job the worker held at the time of the injury;

(c) a rehabilitation plan completed by a rehabilitation provider and designated by the insurer certifies that the injured worker has reasonable vocational goals and a reemployment and wage potential with rehabilitation. The plan must take into consideration the worker's age, education, training, work history, residual physical capacities, and vocational interests.

(d) a rehabilitation plan between the injured worker and the insurer is filed with the department. If the plan calls for the expenditure of funds under 39-71-1004, the department shall authorize the department of social and rehabilitation services to use the funds.

(2) After filing the rehabilitation plan with the department, the injured worker is entitled to receive rehabilitation benefits at the injured worker's temporary total disability rate. The benefits must be paid for the period specified in the rehabilitation plan, not to exceed 104 weeks. Rehabilitation benefits must be paid during a reasonable period, not to exceed 10 weeks, while the worker is waiting to begin the agreed-upon rehabilitation plan. Rehabilitation benefits must be paid while the worker is satisfactorily completing the agreed-upon rehabilitation plan.

(3) If the rehabilitation plan provides for job placement, a vocational rehabilitation provider shall assist the worker in obtaining other employment and the worker is entitled to weekly benefits for a period not to exceed 8 weeks at the worker's temporary total disability rate. If, after receiving benefits under this subsection, the worker decides to proceed with a rehabilitation plan, the weeks in which benefits were paid under this subsection may not be credited against the maximum of 104 weeks of rehabilitation benefits provided in this section.

(4) If there is a dispute as to whether an injured worker can return to the job the worker held at the time of injury, the insurer shall designate a rehabilitation provider to evaluate and determine whether the worker can return to the job held at the time of injury. If it is determined that the worker cannot return to the job held at the time of injury, the worker is entitled to rehabilitation benefits and services as provided in subsection (2).

(5) A worker may not receive temporary total or biweekly permanent partial disability benefits and rehabilitation benefits during the same period of time.

(6) The rehabilitation provider, as authorized by the insurer, shall continue to work with and assist the injured worker until the rehabilitation plan is completed.

(7) A worker may not receive both wages and rehabilitation benefits without the written consent of the insurer. A worker who receives both wages and rehabilitation benefits without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301.

History: En. Sec. 10, Ch. 574, L. 1991; amd. Sec. 7, Ch. 296, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 296 inserted (7) establishing a penalty for receipt of both wages and rehabilitation benefits; and made minor changes in style. Amendment effective July 1, 1993.

Part 21

Compensation Plan Number One

39-71-2101. General requirements for electing coverage under plan. (1) An employer may elect to be bound by compensation plan No. 1 upon furnishing satisfactory proof to the department and the Montana self-insurers guaranty fund of solvency and financial ability to pay the compensation and benefits provided for in this chapter and to discharge all liabilities that are reasonably likely to be incurred during the fiscal year for which the election is effective. The employer may, by order of the department and with the concurrence of the guaranty fund, make the payments directly to employees as they become entitled to receive payments under the terms and conditions of this chapter.

(2) Employers who comply with the provisions of this chapter and who are participating in collectively bargained, jointly administered Taft-Hartley trust funds are eligible to provide self-insured workers' compensation benefits for their employees.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2970, R.C.M. 1921; re-en. Sec. 2970, R.C.M. 1935; amd. Sec. 2, Ch. 443, L. 1973; R.C.M. 1947, 92-901; amd. Sec. 81, Ch. 397, L. 1979; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 1, Ch. 163, L. 1991; amd. Sec. 7, Ch. 619, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 619 inserted (2) providing that employers complying with chapter and participating in Taft-Hartley trust funds are eligible to provide self-insured workers' compensation benefits; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

"Division" defined, 39-71-116.
"Order" defined, 39-71-116.
"Employer" defined, 39-71-117.

39-71-2102. Proof of solvency to be filed. Every employer who has elected to be bound by compensation plan No. 1 shall file proof of his solvency within the time and in the form as may be prescribed by the rules or orders of the department.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2971, R.C.M. 1921; amd. Sec. 5, Ch. 139, L. 1931; re-en. Sec. 2971, R.C.M. 1935; amd. Sec. 3, Ch. 176, L. 1957; amd. Sec. 169, Ch. 147, L. 1963; amd. Sec. 1, Ch. 183, L. 1965; amd. Sec. 1, Ch. 170, L. 1969; amd. Sec. 1, Ch. 143, L. 1971; amd. Sec. 3, Ch. 443, L. 1973; amd. Sec. 2, Ch. 318, L. 1975; R.C.M. 1947, 92-902; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

"Division" defined, 39-71-116.
"Employer" defined, 39-71-117.

39-71-2103. Employer permitted to carry on business and settle directly with employee — individual liability. (1) If such employer making such election shall be found by the department and the Montana self-insurers guaranty fund to have the requisite financial ability to pay the compensation and benefits in this chapter provided for, then the department, with the concurrence of the guaranty fund, shall grant to the employer permission to carry on his business for the fiscal year within which such election is made and such proof filed, or the remaining portion of such fiscal year, and to make such payments directly to his employees as they may become entitled to receive the same.

(2) Each individual employer in an association, corporation, or organization of employers given permission by the department to operate as self-in-

sured under plan No. 1 of this chapter is jointly and severally liable for all obligations incurred by the association, corporation, or organization under this chapter. An association, corporation, or organization of employers given permission to operate as self-insured must maintain excess liability coverage in amounts and under such conditions as provided by rules of the department.

History: **En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2972, R.C.M. 1921; re-en. Sec. 2972, R.C.M. 1935; amd. Sec. 51, Ch. 23, L. 1975; R.C.M. 1947, 92-903(part); amd. Sec. 2, Ch. 480, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 2, Ch. 163, L. 1991.**

Cross-References

"Division" defined, 39-71-116.

"Employer" defined, 39-71-117.

39-71-2104. Renewal of application. An employer, so long as that employer continues to employ and continues to be bound by compensation plan No. 1, shall annually renew the application to be permitted to continue to make payments directly to employees for the next year. The department may, with the concurrence of the Montana self-insurers guaranty fund, renew the application from year to year. The annual renewal application must be in the form, for the period, and subject to the time limits prescribed by the department.

History: **En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2972, R.C.M. 1921; re-en. Sec. 2972, R.C.M. 1935; amd. Sec. 51, Ch. 23, L. 1975; R.C.M. 1947, 92-903(part); amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 3, Ch. 163, L. 1991; amd. Sec. 10, Ch. 555, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 555 in first sentence, after "shall", substituted "annually" for "at least 30 days before the expiration of each fiscal year", after "next" deleted "ensuing fiscal", and at end, after "year", deleted "and under like circumstances as those mentioned for the granting of such permission upon such first application" and inserted third sentence that read: "The annual renewal application must be in the form, for the period, and subject to the time limits prescribed by the department"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

"Division" defined, 39-71-116.

"Employer" defined, 39-71-117.

39-71-2105. Additional proof of solvency — revocation of order. The department, with the concurrence of the Montana self-insurers guaranty fund, may at any time require from any employer acting under compensation plan No. 1 additional proof of solvency and financial ability to pay the compensation provided by this chapter and may at any time, upon notice to the employer of not less than 10 or more than 20 days, after and upon a full hearing, revoke any order or approval.

History: **En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2973, R.C.M. 1921; re-en. Sec. 2973, R.C.M. 1935; amd. Sec. 52, Ch. 23, L. 1975; R.C.M. 1947, 92-904; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 1, Ch. 150, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 150 near beginning, after "department", inserted "with the concurrence of the Montana self-insurers guaranty fund"; and made minor changes in style.

Cross-References

"Division" defined, 39-71-116.

"Order" defined, 39-71-116.

"Employer" defined, 39-71-117.

39-71-2106. Requiring security of employer. (1) (a) The department, with the concurrence of the Montana self-insurers guaranty fund, may require any employer who elects to be bound by compensation plan No. 1 to provide a security deposit in accordance with rules adopted by the department. All securities of the United States treasury must be in book-entry form. Except as provided in subsection (1)(b), the security deposit may be a surety bond, government bond, certificate of deposit, or letter of credit approved by the department and must be the greater of:

(i) $250,000; or

(ii) an average of the workers' compensation liabilities incurred by the employer in Montana for the past 3 calendar years.

(b) The department, with the concurrence of the Montana self-insurers guaranty fund, may, in accordance with rules adopted by the department, require a larger deposit as additional evidence of solvency and financial ability to pay the liabilities provided by this chapter.

(2) (a) The department, with the concurrence of the Montana self-insurers guaranty fund, shall require an employer to give security in addition to the security described in subsection (1) if:

(i) the department determines that the employer lacks the financial ability to pay the compensation that is expected under this chapter and that is chargeable to the employer during the year to be covered by the permission provided for in 39-71-2103; or

(ii) the employer is a group of individual employers seeking permission to operate under compensation plan No. 1.

(b) The additional security required in subsection (2)(a) must be an amount that the department, with the concurrence of the Montana self-insurers guaranty fund, finds reasonable and necessary to meet all liabilities that the employer may accrue under this chapter during the fiscal year.

(3) (a) The security provided for in subsection (2) must be deposited with the department. The security may consist of:

(i) a bond executed to the department in the amount to be fixed by it with a surety, which undertaking must be conditioned that the employer will pay or cause to be paid to employees all sums and amounts for which the employer becomes liable under the terms of this chapter during the year;

(ii) any state, county, municipal, or school district bonds or the bonds or evidence of indebtedness of any individuals or corporations that the department considers solvent; or

(iii) other security deposits allowed in subsection (1)(a).

(b) Every deposit and the character and amount of the securities must at all times be subject to approval, revision, or change by the department as it may require.

(c) Upon proof of the final payment of the liability for which the securities are given, the securities or any remainder of the securities must be returned to the depositor.

(4) The department is liable for the value and safekeeping of all deposits or securities and shall, at any time, upon demand of a bondsman or the depositor, account for the deposits or securities and the earnings of the deposits or securities.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2974, R.C.M. 1921; re-en. Sec. 2974, R.C.M. 1935; amd. Sec. 53, Ch. 23, L. 1975; R.C.M. 1947, 92-905; amd. Sec. 3, Ch. 480, L. 1985; amd. Sec. 51, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 1, Ch. 120, L. 1991; amd. Sec. 9, Ch. 558, L. 1991; amd. Sec. 2, Ch. 150, L. 1993; amd. Sec. 11, Ch. 555, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 150 in (1)(a), (1)(b), (2)(a), and (2)(b), near beginning after "department", inserted "with the concurrence of the Montana self-insurers guaranty fund"; and made minor changes in style.

Chapter 555 inserted second sentence of (1)(a) that read: "All securities of the United States treasury must be in book-entry form"; near beginning of (2)(a)(i), before "lacks", deleted "is insolvent or" and near middle, before "year", deleted "fiscal"; near beginning of (2)(a)(ii) substituted "a group" for "an association, corporation, or organization"; at end of first sentence of (3)(a) deleted "and may be either an estimated percent of the employer's last preceding annual payroll or a percent of the established amount of his annual payroll for the fiscal year"; near beginning of (3)(a)(i), after "bond", deleted "or undertaking", near middle substituted "a surety" for "two or more sufficient sureties", and near end, before "year", deleted "fiscal"; inserted (3)(a)(iii) that read: "(iii) other security deposits allowed in subsection (1)(a)"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

"Division" defined, 39-71-116.
"Payroll" defined, 39-71-116.
"Employer" defined, 39-71-117.

39-71-2107. When employer to make deposit or security to guarantee payment of compensation. Within 30 days after the happening of an accident where death or the nature of the injury renders the amount of future payments certain or reasonably certain, the employer shall make a deposit or give security, as herein defined, with the department for the protection and guaranty of the payment of such liability in such sum as the department may direct. However, if sufficient securities are already on deposit with the department or if the department determines that the employer has sufficient financial responsibility to meet the liability of the employer, together with other liabilities already accrued, no such additional deposit or security shall be demanded.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2976, R.C.M. 1921; re-en. Sec. 2976, R.C.M. 1935; amd. Sec. 55, Ch. 23, L. 1975; R.C.M. 1947, 92-907; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

"Division" defined, 39-71-116.
"Employer" defined, 39-71-117.

39-71-2108. Failure of employer to pay compensation — duty of department. Upon the failure of the employer to pay any compensation provided for in this chapter upon the terms and in the amounts and at the times when the same becomes due and payable, the department shall, upon demand of the person to whom compensation is due, apply any deposits made with the department to the payment of the same, and the department shall take the proper steps to convert any securities on deposit with the department or sufficient thereof into cash and to pay the same upon the liabilities of the employer accruing under the terms of this chapter, and the department shall, when necessary, collect and enforce the collection of the liability of all sureties upon any bonds which may be given by the employer to insure the payment of his liability. To these ends and for these purposes, the department shall be deemed to be the owner of the deposit and security and the obligee in the bond in trust for the purposes and may proceed in its own name to recover upon the bonds or foreclose and liquidate the securities.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2975, R.C.M. 1921; re-en. Sec. 2975, R.C.M. 1935; amd. Sec. 54, Ch. 23, L. 1975; R.C.M. 1947, 92-906; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

"Division" defined, 39-71-116.
"Employer" defined, 39-71-117.

39-71-2109. Repealed. Sec. 21, Ch. 555, L. 1993.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2977, R.C.M. 1921; re-en. Sec. 2977, R.C.M. 1935; amd. Sec. 56, Ch. 23, L. 1975; R.C.M. 1947, 92-908; amd. Sec. 2, Ch. 471, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 4, Ch. 163, L. 1991.

Part 22

Compensation Plan Number Two

39-71-2201. Election to be bound by plan. (1) Any employer except those specified in 39-71-403 may, by filing his election to become bound by compensation plan No. 2, insure his liability to pay the compensation and benefits provided by this chapter with any insurance company authorized to transact such business in this state.

(2) Any employer electing to become bound by compensation plan No. 2 shall make his election on the form and in the manner prescribed by the department.

History: (1)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2978, R.C.M. 1921; re-en. Sec. 2978, R.C.M. 1935; amd. Sec. 1, Ch. 49, L. 1961; Sec. 92-1001, R.C.M. 1947; (2)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2979, R.C.M. 1921; re-en. Sec. 2979, R.C.M. 1935; amd. Sec. 2, Ch. 49, L. 1961; amd. Sec. 57, Ch. 23, L. 1975; amd. Sec. 1, Ch. 324, L. 1977; Sec. 92-1002, R.C.M. 1947; R.C.M. 1947, 91-1001, 92-1002(1); amd. Sec. 82, Ch. 397, L. 1979; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

"Division" defined, 39-71-116.

"Employer" defined, 39-71-117.

39-71-2202. Policies made subject to chapter. Every policy for insurance written under compensation plan No. 2 shall be considered to be made subject to the provisions of this chapter.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2982, R.C.M. 1921; re-en. Sec. 2982, R.C.M. 1935; amd. Sec. 1, Ch. 217, L. 1951; amd. Sec. 5, Ch. 176, L. 1957; amd. Sec. 1, Ch. 203, L. 1959; amd. Sec. 170, Ch. 147, L. 1963; amd. Sec. 1, Ch. 142, L. 1971; amd. Sec. 59, Ch. 23, L. 1975; amd. Sec. 3, Ch. 318, L. 1975; R.C.M. 1947, 92-1005; amd. Sec. 13, Ch. 103, L. 1979.

39-71-2203. Content of policies — policies subject to approval, change, or revision by department. (1) All policies insuring the payment of compensation under this chapter must contain a clause to the effect that, as between the employee and the insurer, the notice to or knowledge of the occurrence of the injury on the part of the insured shall be deemed notice or knowledge, as the case may be, on the part of the insurer; that jurisdiction of the insured for the purpose of this chapter shall be jurisdiction of the insurer; and that the insurer shall in all things be bound by and subject to the awards, orders, judgments, or decrees rendered against such insured.

(2) No such policy shall be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled to compensation all the installments of compensation or other payments in this chapter provided for and that the obligation shall not be affected by any default of the insured after the injury or by any default in the giving of any notice required by such policy or by this chapter or otherwise. Such agreement shall be construed to be a direct promise by the insured to the person entitled to compensation.

(3) Every policy or contract insuring against liability for compensation under compensation plan No. 2 must contain a clause to the effect that the insurer shall be directly and primarily liable to and will pay directly to the

employee or in case of death to his beneficiaries or major or minor dependents, the compensation, if any, for which the employer is liable.

(4) Every such policy shall at all times be subject to approval, change, or revision by the department and shall contain the clauses, agreements, and promises required by this chapter.

History: (1)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2980, R.C.M. 1921; amd. Sec. 6, Ch. 139, L. 1931; re-en. Sec. 2980, R.C.M. 1935; amd. Sec. 4, Ch. 176, L. 1957; Sec. 92-1003, R.C.M. 1947; (2)En. Sec. 35, Ch. 96, L. 1915; amd. Sec. 10, Ch. 100, L. 1919; re-en. Sec. 2981, R.C.M. 1921; amd. Sec. 11, Ch. 177, L. 1929; re-en. Sec. 2981, R.C.M. 1935; amd. Sec. 1, Ch. 141, L. 1971; amd. Sec. 58, Ch. 23, L. 1975; Sec. 92-1004, R.C.M. 1947; (3), (4)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2988, R.C.M. 1921; re-en. Sec. 2988, R.C.M. 1935; Sec. 92-1011, R.C.M. 1947; R.C.M. 1947, 92-1003, 92-1004(part), 92-1011; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Policies to provide for freedom of choice of practitioners — professional practice not enlarged, 33-22-111.

"Insurer" defined, 39-71-116.

"Employer" defined, 39-71-117.

"Employee" defined, 39-71-118.

"Injury" or "injured" defined, 39-71-119.

39-71-2204. Insurer to submit notice of coverage within thirty days — penalty for failure. (1) The insurer shall, within 30 days after the issuance of the policy of workers' compensation insurance, submit to the department the notice of coverage stating the effective date of the policy insuring the employer and such other information as may be required by the department.

(2) The department may:

(a) recognize the national council on compensation insurance as an agent for authorized workers' compensation insurers in Montana; and

(b) under terms and conditions acceptable to the department, accept notice of coverage received from the national council on compensation insurance as the insurer's notice of coverage.

(3) The department may, in its discretion, assess a penalty of no more than $200 against an insurer that as a general business practice does not comply with the 30-day notice requirement set forth in subsection (1).

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2979, R.C.M. 1921; re-en. Sec. 2979, R.C.M. 1935; amd. Sec. 2, Ch. 49, L. 1961; amd. Sec. 57, Ch. 23, L. 1975; amd. Sec. 1, Ch. 324, L. 1977; R.C.M. 1947, 92-1002(part); amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 12, Ch. 555, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 555 inserted (2) allowing the Department to recognize the national council as an agent and to accept notice of coverage received from the national council; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

"Division" defined, 39-71-116.

"Insurer" defined, 39-71-116.

"Employer" defined, 39-71-117.

39-71-2205. Policy in effect until canceled or replaced — twenty-day notification of cancellation required — penalty. (1) The policy remains in effect until canceled, and cancellation may take effect only by written notice to the named insured and to the department at least 20 days prior to the date of cancellation. However, the policy terminates on the effective date of a replacement or succeeding workers' compensation insurance policy issued to the insured. Nothing in this section prevents an insurer from canceling a policy of workers' compensation insurance before a replacement policy is issued to the insured.

(2) The department may:

(a) recognize the national council on compensation insurance as an agent for authorized workers' compensation insurers in Montana; and

(b) under terms and conditions acceptable to the department, accept notice of cancellation received from the national council on compensation insurance as the insurer's notice of cancellation.

(3) (a) The department may assess a penalty of up to $200 against an insurer that does not comply with the notice requirement in subsection (1).

(b) An insurer may contest the penalty assessment in a hearing conducted according to department rules.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2979, R.C.M. 1921; re-en. Sec. 2979, R.C.M. 1935; amd. Sec. 2, Ch. 49, L. 1961; amd. Sec. 57, Ch. 23, L. 1975; amd. Sec. 1, Ch. 324, L. 1977; R.C.M. 1947, 92-1002(part); amd. Sec. 1, Ch. 333, L. 1989; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 13, Ch. 555, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 555 inserted (2) allowing the Department to recognize the national council as an agent and to accept notice of cancellation received from the national council; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

"Division" defined, 39-71-116.

"Insurer" defined, 39-71-116.

39-71-2206. Deposits by insurer with department to guarantee payment of liability. (1) (a) Before issuance of any policy by an insurer as herein authorized, the insurer shall deposit with the department book-entry securities of the United States or the state of Montana or of any school district, county, city, or town in the state of Montana or a corporate surety bond made out to and approved by the department in an amount not less than $25,000 or more than $200,000, as the department may determine.

(b) If any insurer fails to discharge any liability after the amount thereof is determined by the department and within the time limited by the department, the department shall convert the bonds or any part thereof as is necessary into cash and from the proceeds liquidate the liability, and thereafter the insurer shall make an additional deposit to meet any deficiency caused thereby. It is intended to give the department the discretion in the matter of whether an insurer has failed to discharge any liability.

(c) If any insurer fails to replace a canceling, terminating, or maturing security within the time limit established by the department, the department shall protect the security deposit by converting the canceling, terminating, or maturing security into cash and shall maintain the deposit until a replacement security acceptable to the department is deposited.

(2) Within 30 days of the happening of an accident where death or the nature of the injury renders the amount of future payments certain or reasonably certain, the insurer shall make a deposit, as herein defined, with the department for the protection and guarantee of the payment of the liability in a sum as the department may direct. However, if the department considers the amount on deposit by the insurer under the provisions of subsection (1) sufficient to cover all liabilities of the insurer, then no further deposit may be required.

(3) Any deposit made under the provisions of compensation plan No. 2 must be held in trust by the department as security for the payment of the liability for which the deposit was made. The deposit may be reduced from

time to time with the permission of the department as the payment of the liability of the insurer may reduce the amount required to be on deposit. The deposit may be changed or renewed when desired by the depositor by withdrawing the same or any part thereof and substituting other deposits therefor. Upon proof of the final payment of the liability for which the deposit was made, any deposit remaining must be returned to the depositor. All earnings made by the deposit must first be applied upon any liability of the depositors, and if no such liability exists, then the earnings must upon demand be delivered to the depositor. The department and its bondsmen are liable for the value and safekeeping of the deposit and shall at any time, upon demand of a depositor, account for the same and the earnings thereof.

(4) In the event of an insolvency of a plan No. 2 insurer, the department may, at its discretion, release part or all of the deposit held to the Montana insurance guaranty association for payment of the insurer's Montana workers' compensation claims if:

(a) the insurer has been determined to be insolvent by a court of competent jurisdiction or bankruptcy proceedings have been instituted by or against it;

(b) the insurer is unable to pay its workers' compensation claims; and

(c) the insurer's Montana workers' compensation liabilities have become the responsibility of the Montana insurance guaranty association.

History: (1)En. Sec. 35, Ch. 96, L. 1915; amd. Sec. 10, Ch. 100, L. 1919; re-en. Sec. 2981, R.C.M. 1921; amd. Sec. 11, Ch. 177, L. 1929; re-en. Sec. 2981, R.C.M. 1935; amd. Sec. 1, Ch. 141, L. 1971; amd. Sec. 58, Ch. 23, L. 1975; Sec. 92-1004, R.C.M. 1947; (2)En. Sec. 35, Ch. 96, L. 1915; amd. Sec. 11, Ch. 100, L. 1919; re-en. Sec. 2984, R.C.M. 1921; re-en. Sec. 2984, R.C.M. 1935; amd. Sec. 61, Ch. 23, L. 1975; Sec. 92-1007, R.C.M. 1947; (3)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2989, R.C.M. 1921; re-en. Sec. 2989, R.C.M. 1935; Sec. 92-1012, R.C.M. 1947; R.C.M. 1947, 92-1004(part), 92-1007, 92-1012; amd. Sec. 83, Ch. 397, L. 1979; amd. Sec. 1, Ch. 242, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 14, Ch. 555, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 555 near beginning of first sentence of (1)(a), after "department", substituted "book-entry securities" for "bonds"; inserted (1)(c) regarding protection of the security deposit; inserted (4) regarding release of the deposit in case of insolvency of a plan No. 2 insurer; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.
"Injury" or "injured" defined, 39-71-119.

39-71-2207. Repealed. Sec. 21, Ch. 555, L. 1993.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2985, R.C.M. 1921; re-en. Sec. 2985, R.C.M. 1935; amd. Sec. 62, Ch. 23, L. 1975; R.C.M. 1947, 92-1008; amd. Sec. 3, Ch. 471, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

39-71-2208 through 39-71-2210 reserved.

39-71-2211. *(Temporary)* **Premium rates for construction industry — filing required.** (1) With respect to each classification of risk in the construction industry under plan No. 2, the rating organization described in 33-16-1005 shall file with the commissioner of insurance a method of computing premiums that does not impose a higher insurance premium solely because of an employer's higher rate of wages paid.

(2) The commissioner shall accept a filing under subsection (1) that includes a reasonable method of recognizing differences in rates of pay. This

method must use a credit scale with the starting point set at the Montana average weekly wage as reported by the department.

(3) The rating organization shall file a revenue neutral plan for new and renewed policies by July 1, 1992, for prompt and orderly transition to a method of computing premiums that is in compliance with the requirements of this section.

(4) The state compensation insurance fund, plan No. 3, shall adopt the plan filed by the rating organization or adopt a credit scale plan that meets the requirements of this section.

39-71-2211. *(Effective July 1, 1994)* **Premium rates for construction industry — filing required.** (1) With respect to each classification of risk in the construction industry under plan No. 2, the rating organization described in 33-16-1005 shall file with the commissioner of insurance a method of computing premiums that does not impose a higher insurance premium solely because of an employer's higher rate of wages paid.

(2) The commissioner shall accept a filing under subsection (1) that includes a reasonable method of recognizing differences in rates of pay. This method must use a credit scale with the starting point set at one and one-half times the Montana average weekly wage as reported by the department.

(3) The rating organization shall file a revenue neutral plan for new and renewed policies by July 1, 1992, for prompt and orderly transition to a method of computing premiums that is in compliance with the requirements of this section.

(4) The state compensation insurance fund, plan No. 3, shall adopt the plan filed by the rating organization or adopt a credit scale plan that meets the requirements of this section.

History: En. Sec. 3, Ch. 480, L. 1991; amd. Sec. 1, Ch. 224, L. 1993; amd. Sec. 14, Ch. 630, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 224 in second sentence in (2) inserted multiplier of one and one-half. Amendment effective July 1, 1994.

Name Change — Directions to Code Commissioner: Section 14, Ch. 630, L. 1993, provided: "Wherever the name "state compensation mutual insurance fund", meaning the fund established in 39-71-2313, appears in the Montana Code Annotated or in legislation enacted by the 1993 legislature, the code commissioner is directed to change the name to "state compensation insurance fund"." The phrase appeared in this section and was changed by the Code Commissioner as directed.

Cross-References

"Construction industry" defined, 39-71-116.

Part 23

Compensation Plan Number Three

39-71-2301. Repealed. Sec. 59, Ch. 613, L. 1989.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2993, R.C.M. 1921; re-en. Sec. 2993, R.C.M. 1935; amd. Sec. 4, Ch. 123, L. 1957; amd. Sec. 176, Ch. 147, L. 1963; amd. Sec. 22, Ch. 329, L. 1969; amd. Sec. 69, Ch. 23, L. 1975; amd. Sec. 1, Ch. 171, L. 1975; R.C.M. 1947, 92-1105(1); amd. Sec. 14, Ch. 103, L. 1979.

39-71-2302. Repealed. Sec. 59, Ch. 613, L. 1989.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2990, R.C.M. 1921; re-en. Sec. 2990, R.C.M. 1935; amd. Sec. 1, Ch. 123, L. 1957; amd. Sec. 175, Ch. 147, L. 1963; amd. Sec. 1, Ch. 233, L. 1969; amd. Sec. 20, Ch. 329, L. 1969; amd. Sec. 65, Ch. 23, L. 1975; R.C.M. 1947, 92-1101; amd. Sec. 1, Ch. 232, L. 1987.

39-71-2303. Renumbered 39-71-2336 by Code Commissioner, 1989.

39-71-2304. Repealed. Sec. 59, Ch. 613, L. 1989.

History: (1)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2992, R.C.M. 1921; re-en. Sec. 2992, R.C.M. 1935; amd. Sec. 3, Ch. 123, L. 1957; amd. Sec. 21, Ch. 329, L. 1969; amd. Sec. 68, Ch. 23, L. 1975; Sec. 92-1104, R.C.M. 1947; (2) thru (5)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2993, R.C.M. 1921; re-en. Sec. 2993, R.C.M. 1935; amd. Sec. 4, Ch. 123, L. 1957; amd. Sec. 176, Ch. 147, L. 1963; amd. Sec. 22, Ch. 329, L. 1969; amd. Sec. 69, Ch. 23, L. 1975; amd. Sec. 1, Ch. 171, L. 1975; Sec. 92-1105, R.C.M. 1947; R.C.M. 1947, 92-1104, 92-1105(3), (4); amd. Sec. 4, Ch. 283, L. 1983; amd. Sec. 2, Ch. 232, L. 1987; amd. Sec. 1, Ch. 239, L. 1987; amd. Sec. 10, Ch. 333, L. 1989; amd. Sec. 2, Ch. 641, L. 1989.

39-71-2305. Repealed. Sec. 59, Ch. 613, L. 1989.

History: En. 92-1105.1 by Sec. 28, Ch. 341, L. 1969; amd. Sec. 70, Ch. 23, L. 1975; R.C.M. 1947, 92-1105.1; amd. Sec. 1, Ch. 109, L. 1987.

39-71-2306. Repealed. Sec. 59, Ch. 613, L. 1989.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2996, R.C.M. 1921; re-en. Sec. 1996, R.C.M. 1935; amd. Sec. 4, Ch. 233, L. 1969; amd. Sec. 71, Ch. 23, L. 1975; R.C.M. 1947, 92-1108; amd. Sec. 15, Ch. 103, L. 1979.

39-71-2307. Renumbered 39-71-2339 by Code Commissioner, 1989.

39-71-2308. Renumbered 39-71-2340 by Code Commissioner, 1989.

39-71-2309. Repealed. Sec. 16, Ch. 103, L. 1979.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3003, R.C.M. 1921; re-en. Sec. 3003, R.C.M. 1935; amd. Sec. 182, Ch. 147, L. 1963; amd. Sec. 76, Ch. 23, L. 1975; R.C.M. 1947, 92-1115.

39-71-2310. Repealed. Sec. 16, Ch. 103, L. 1979.

History: (1)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3004, R.C.M. 1921; re-en. Sec. 3004, R.C.M. 1935; amd. Sec. 183, Ch. 147, L. 1963; Sec. 92-1116, R.C.M. 1947; (2)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3005, R.C.M. 1921; re-en. Sec. 3005, R.C.M. 1935; amd. Sec. 77, Ch. 23, L. 1975; Sec. 92-1117, R.C.M. 1947; R.C.M. 1947, 92-1116, 92-1117.

39-71-2311. Intent and purpose of plan. It is the intent and purpose of the state fund to allow employers the option to insure their liability for workers' compensation and occupational disease coverage with a mutual insurance fund. The state fund is required to insure any employer in this state requesting coverage, and it may not refuse coverage for an employer. The state fund must be neither more nor less than self-supporting. Premium rates must be set at least annually at a level sufficient to ensure the adequate funding of the insurance program, including the costs of administration, benefits, and adequate reserves, during and at the end of the period for which the rates will be in effect. In determining premium rates, the state fund shall make every effort to adequately predict future costs. When the costs of a factor influencing rates are unclear and difficult to predict, the state fund shall use a prediction calculated to be more than likely to cover those costs rather than less than likely to cover those costs. Unnecessary surpluses that are created by the imposition of premiums found to have been set higher than necessary because of a high estimate of the cost of a factor or factors may be refunded by the declaration of a dividend as provided in this part. For the purpose of keeping the state fund solvent, it must implement variable pricing levels as provided in 39-71-2341.

History: En. Sec. 1, Ch. 613, L. 1989; amd. Sec. 7, Ch. 4, Sp. L. May 1990; amd. Sec. 6, Ch. 323, L. 1991; amd. Sec. 12, Ch. 295, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 295 in second sentence, after "for an employer", deleted "unless an assigned risk plan established under 39-71-431 is in effect" and at end of section, after "variable pricing levels", substituted "as provided in 39-71-2341" for "within individual rate classifications to reward an employer with a good safety record and penalize an employer with a poor safety record. An employer's payroll reporting and premium history and other relevant factors may also be considered in implementing variable pricing levels." Amendment effective January 1, 1994.

Cross-References

"Employer" defined, 39-71-117.

39-71-2312. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Board" means the board of directors of the state compensation insurance fund provided for in 2-15-1019.

(2) "Department" means the department of administration provided for in 2-15-1001.

(3) "Executive director" means the chief executive officer of the state compensation insurance fund.

(4) "State fund" means the state compensation insurance fund provided for in 39-71-2313. It is also known as compensation plan No. 3 or plan No. 3.

History: En. Sec. 2, Ch. 613, L. 1989; amd. Sec. 14, Ch. 630, L. 1993.

Compiler's Comments

Name Change — Directions to Code Commissioner: Section 14, Ch. 630, L. 1993, provided: "Wherever the name "state compensation mutual insurance fund", meaning the fund established in 39-71-2313, appears in the Montana Code Annotated or in legislation enacted by the 1993 legislature, the code commissioner is directed to change the name to "state compensation insurance fund"." The phrase appeared in this section and was changed by the Code Commissioner as directed.

39-71-2313. State compensation insurance fund created. There is a state compensation insurance fund known as the state fund that is a nonprofit, independent public corporation established for the purpose of allowing an option for employers to insure their liability for workers' compensation and occupational disease coverage under this chapter.

History: En. Sec. 4, Ch. 613, L. 1989; amd. Sec. 8, Ch. 4, Sp. L. May 1990; amd. Sec. 14, Ch. 630, L. 1993.

Compiler's Comments

Name Change — Directions to Code Commissioner: Section 14, Ch. 630, L. 1993, provided: "Wherever the name "state compensation mutual insurance fund", meaning the fund established in 39-71-2313, appears in the Montana Code Annotated or in legislation enacted by the 1993 legislature, the code commissioner is directed to change the name to "state compensation insurance fund"." The phrase appeared in this section and was changed by the Code Commissioner as directed.

39-71-2314. State fund — assigned risk plan. (1) If an assigned risk plan is established and administered pursuant to 39-71-431, the state fund is subject to the premium tax liability for insurers as provided in 33-2-705 based on earned premium and paid on revenue from the previous fiscal year.

(2) The state fund is subject to laws that generally apply to state agencies, including but not limited to Title 2, chapters 2, 3, 4 (only as provided in 39-71-2316), and 6, and Title 5, chapter 13. The state fund is not exempt from a law that applies to state agencies unless that law specifically exempts the state fund by name and clearly states that it is exempt from that law.

History: En. Sec. 10, Ch. 613, L. 1989; amd. Sec. 9, Ch. 4, Sp. L. May 1990; amd. Sec. 3, Ch. 630, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 630 in (3), at beginning of parenthetical clause, substituted "only" for "except". Amendment effective July 1, 1993.

39-71-2315. Management of state fund — powers and duties of the board — business plan required. (1) The management and control of the state fund is vested solely in the board.

(2) The board is vested with full power, authority, and jurisdiction over the state fund. The board may perform all acts necessary or convenient in the exercise of any power, authority, or jurisdiction over the state fund, either in the administration of the state fund or in connection with the insurance business to be carried on under the provisions of this part, as fully and completely as the governing body of a private mutual insurance carrier, in order to fulfill the objectives and intent of this part. Bonds may not be issued by the board, the state fund, or the executive director.

(3) The board shall adopt a business plan no later than June 30 for the next fiscal year. At a minimum, the plan must include:

(a) specific goals for the fiscal year for financial performance. The standard for measurement of financial performances must include an evaluation of premium to surplus.

(b) specific goals for the fiscal year for operating performance. Goals must include but not be limited to specific performance standards for staff in the area of senior management, underwriting, and claims administration. Goals must, in general, maximize efficiency, economy, and equity as allowed by law.

(4) The business plan must be available upon request to the general public for a fee not to exceed the actual cost of publication. However, performance goals relating to a specific employment position are confidential and not available to the public.

(5) No sooner than July 1 or later than October 31, the board shall convene a public meeting to review the performance of the state fund, using the business plan for comparison of all the established goals and targets. The board shall publish, by November 30 of each year, a report of the state fund's actual performance as compared to the business plan.

History: En. Sec. 5, Ch. 613, L. 1989; amd. Sec. 10, Ch. 4, Sp. L. May 1990; amd. Sec. 19, Ch. 619, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 619 inserted (3) requiring adoption of business plan; inserted (4) requiring business plan to be available to public for fee; and inserted (5) relating to public meeting and published report. Amendment effective July 1, 1993.

39-71-2316. Powers of the state fund. For the purposes of carrying out its functions, the state fund may:

(1) insure any employer for workers' compensation and occupational disease liability as the coverage is required by the laws of this state. The state fund may charge a minimum yearly premium to cover its administrative costs for coverage of a small employer.

(2) sue and be sued;

(3) except as provided in section 21, Chapter 4, Special Laws of May 1990, enter into contracts relating to the administration of the state fund, including claims management, servicing, and payment;

(4) collect and disburse money received;

(5) adopt classifications and charge premiums for the classifications so that the state fund will be neither more nor less than self-supporting. Premium rates for classifications may only be adopted and changed using a process, a procedure, formulas, and factors set forth in rules adopted under Title 2, chapter 4, parts 2 through 4. After such rules have been adopted, the state fund need not follow the rulemaking provisions of Title 2, chapter 4, when changing classifications and premium rates. The contested case rights and provisions of Title 2, chapter 4, do not apply to an employer's classification or premium rate. The state fund must belong to the national council on compensation insurance and shall use the classifications of employment adopted by the national council and corresponding rates as a basis for setting its own rates.

(6) pay the amounts determined due under a policy of insurance issued by the state fund;

(7) hire personnel;

(8) declare dividends if there is an excess of assets over liabilities. However, dividends may not be paid until adequate actuarially determined reserves are set aside. If those reserves have been set aside, money that can be declared as a dividend must be transferred to the account created by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, and used for the purposes of that account. After all claims funded by that account have been paid, dividends may be declared and paid to insureds.

(9) perform all functions and exercise all powers of a private insurance carrier that are necessary, appropriate, or convenient for the administration of the state fund.

History: En. Sec. 8, Ch. 613, L. 1989; amd. Sec. 11, Ch. 4, Sp. L. May 1990; amd. Sec. 4, Ch. 630, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 630 at end of first sentence of (1), after "state", deleted "and, in connection with the coverage, provide employers' liability insurance"; deleted former (3) that read: "(3) adopt, amend, and repeal rules relating to the conduct of its business"; and near middle of (9) substituted "private insurance carrier" for "domestic mutual insurer". Amendment effective July 1, 1993.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Workers' compensation coverage, liability, and subrogation, Title 39, ch. 71, part 4.

39-71-2317. Appointment of executive director — management staff. The board shall appoint an executive director of the state fund who has general responsibility for the operations of the state fund. The executive director must have executive level experience, with knowledge of the insurance industry. The executive director must receive compensation as set by the board and serve at the pleasure of the board. The executive director may hire the management staff of the state fund, each of whom serves at the pleasure of the executive director.

History: En. Sec. 7, Ch. 613, L. 1989.

39-71-2318. Personal liability excluded. The members of the board, the executive director, and employees of the state fund are not liable personally, either jointly or severally, for any debt or obligation created or incurred by the state fund.

History: En. Sec. 6, Ch. 613, L. 1989.

Cross-References

State subject to suit, Art. II, sec. 18, Mont. Const.

Liability exposure of state government, Title 2, ch. 9, part 1.

39-71-2319. Assets and liabilities of prior state fund. All assets and funds held by the state compensation insurance fund established in former sections 39-71-2301, 39-71-2302, 39-71-2304 through 39-71-2306, and 39-71-2324 and sections 39-71-2321 through 39-71-2323, 39-71-2325 through 39-71-2327, 39-71-2336, 39-71-2339, and 39-71-2340 must be transferred to the state fund, and the state fund shall assume liability for all outstanding claims and indebtedness of the previously existing state fund.

History: En. Sec. 11, Ch. 613, L. 1989.

39-71-2320. Property of the state fund — investment required. All premiums and other money paid to the state fund, all property and securities acquired through the use of money belonging to the state fund, and all interest and dividends earned upon money belonging to the state fund are the sole property of the state fund and must be used exclusively for the operations and obligations of the state fund. The money collected by the state fund may not be used for any other purpose. However, state fund money must be invested by the board of investments provided for in 2-15-1808.

History: En. Sec. 9, Ch. 613, L. 1989.

39-71-2321. What to be deposited in state fund. (1) (a) All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the state fund, and securities acquired by or through use of money must be deposited in the state fund. They must be separated into two accounts based upon whether they relate to claims for injuries resulting from accidents that occurred before July 1, 1990, or claims for injuries resulting from accidents that occur on or after that date.

(b) All funds deposited in the state fund are statutorily appropriated as provided in 17-7-502.

(2) The proceeds of bonds issued and loans given to the state fund under 39-71-2354 and 39-71-2355 must be deposited in the account for claims for injuries resulting from accidents that occurred before July 1, 1990.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2993, R.C.M. 1921; re-en. Sec. 2993, R.C.M. 1935; amd. Sec. 4, Ch. 123, L. 1957; amd. Sec. 176, Ch. 147, L. 1963; amd. Sec. 22, Ch. 329, L. 1969; amd. Sec. 69, Ch. 23, L. 1975; amd. Sec. 1, Ch. 171, L. 1975; R.C.M. 1947, 92-1105(2); amd. Sec. 5, Ch. 283, L. 1983; amd. Sec. 32, Ch. 613, L. 1989; amd. Sec. 12, Ch. 4, Sp. L. May 1990; amd. Sec. 4, Ch. 797, L. 1991; amd. Sec. 10, Ch. 630, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 630 inserted (1)(b) statutorily appropriating funds deposited in the state fund. Amendment effective July 1, 1993.

39-71-2322. Money in state fund held in trust — disposition of funds upon repeal of chapter. The money coming into the state fund must be held in trust for the purpose for which the money was collected. If this chapter is repealed, the money is subject to the disposition provided by the legislature repealing this chapter. In the absence of a legislative provision, distribution must be in accordance with the justice of the matter, due regard being had to obligations of compensation incurred and existing.

History: En. Sec. 24, Ch. 96, L. 1915; re-en. Sec. 2966, R.C.M. 1921; re-en. Sec. 2966, R.C.M. 1935; amd. Sec. 168, Ch. 147, L. 1963; R.C.M. 1947, 92-840; amd. Sec. 6, Ch. 283, L. 1983; amd. Sec. 33, Ch. 613, L. 1989.

39-71-2323. Surplus in state fund — payment of dividends. Subject to the provisions of 39-71-2316, if at the end of any fiscal year there exists in the state fund account created by 39-71-2321 for claims for injuries resulting from accidents that occur on or after July 1, 1990, an excess of assets over liabilities, including necessary reserves and a reasonable surplus, and if the excess may be refunded safely, then the state fund may declare a dividend. The rules of the state fund must prescribe the manner of payment to those employers who have paid premiums into the state fund in excess of liabilities chargeable to them in the fund for that year. In determining the amount or proportion of the balance to which the employer is entitled as dividends, the state fund shall give consideration to the prior paid premiums and accident experience of each individual employer during the dividend year.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2998, R.C.M. 1921; re-en. Sec. 2998, R.C.M. 1935; amd. Sec. 6, Ch. 123, L. 1957; amd. Sec. 180, Ch. 147, L. 1963; amd. Sec. 72, Ch. 23, L. 1975; R.C.M. 1947, 92-1110; amd. Sec. 7, Ch. 283, L. 1983; amd. Sec. 34, Ch. 613, L. 1989; amd. Sec. 13, Ch. 4, Sp. L. May 1990; amd. Sec. 5, Ch. 630, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 630 near beginning of first sentence, after "39-71-2316", deleted "(9)". Amendment effective July 1, 1993.

Cross-References

"Division" defined, 39-71-116.
"Year" defined, 39-71-116.
"Employer" defined, 39-71-117.

39-71-2324. Repealed. Sec. 59, Ch. 613, L. 1989.

History: En. Sec. 40, Ch. 96, L. 1915; amd. Sec. 7, Ch. 196, L. 1921; re-en. Sec. 3000, R.C.M. 1921; re-en. Sec. 3000, R.C.M. 1935; amd. Sec. 17, Ch. 176, L. 1953; amd. Sec. 186, Ch. 147, L. 1963; amd. Sec. 73, Ch. 23, L. 1975; R.C.M. 1947, 92-1112; amd. Sec. 8, Ch. 283, L. 1983.

39-71-2325. State fund to keep accounts of segregations. The state fund shall keep an accurate account of all the segregations of the state fund and shall divert from the fund any sums necessary to meet monthly payments, pending the conversion into cash of any security, and in such case shall repay the same out of the cash realized from the security.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3001, R.C.M. 1921; re-en. Sec. 3001, R.C.M. 1935; amd. Sec. 187, Ch. 147, L. 1963; amd. Sec. 74, Ch. 23, L. 1975; R.C.M. 1947, 92-1113; amd. Sec. 9, Ch. 283, L. 1983; amd. Sec. 35, Ch. 613, L. 1989.

Cross-References

"Division" defined, 39-71-116.

39-71-2326. Repealed. Sec. 6, Ch. 664, L. 1987.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3010, R.C.M. 1921; re-en. Sec. 3010, R.C.M. 1935; amd. Sec. 184, Ch. 147, L. 1963; amd. Sec. 81, Ch. 23, L. 1975; R.C.M. 1947, 92-1122; amd. Sec. 10, Ch. 283, L. 1983.

39-71-2327. Earnings of state fund to be credited to fund — improper use a felony. All earnings made by the state fund by reason of interest paid for the deposit thereof or otherwise must be credited to and become a part of the fund, and the making of profit, either directly or indirectly, by any person out of the use of the fund is a felony. A person convicted of an offense under this section is punishable by imprisonment in the state prison for a term not to exceed 2 years or a fine of not more than $5,000, or both.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3011, R.C.M. 1921; re-en. Sec. 3011, R.C.M 1935; amd. Sec. 185, Ch. 147, L. 1963; amd. Sec. 82, Ch. 23, L. 1975; R.C.M. 1947, 92-1123; amd. Sec. 11, Ch. 283, L. 1983; amd. Sec. 36, Ch. 613, L. 1989.

39-71-2328 and 39-71-2329 reserved.

39-71-2330. Rate setting. The board has the authority to establish the rates to be charged by the state fund for insurance. The board shall engage the services of an independent actuary who is a member in good standing with the American academy of actuaries to develop and recommend actuarially sound rates. Rates must be set at amounts sufficient, when invested, to carry the estimated cost of all claims to maturity, to meet the reasonable expenses of conducting the business of the state fund, and to amass and maintain, by July 1, 2003, a surplus of 25% of the annual premium.

History: En. Sec. 7, Ch. 630, L. 1993.

Compiler's Comments

Effective Date: Section 18(2), Ch. 630, L. 1993, provided that this section is effective July 1, 1993.

39-71-2331 through 39-71-2335 reserved.

39-71-2336. Manner of electing — contract or policy of insurance — payment of premium. The state fund shall prescribe the procedure by which an employer may elect to be bound by compensation plan No. 3, the effective time of the election, and the manner in which the election is terminated for reasons other than default in payment of premiums. Every employer electing to be bound by compensation plan No. 3 must receive from the state fund a contract or policy of insurance in a form approved by the department. The premium must be paid by the employer to the state fund at such times as the state fund prescribes and must be paid over by the state fund to the state treasurer to the credit of the state fund.

History: En. Sec. 40, Ch. 96, L. 1915; amd. Sec. 6, Ch. 196, L. 1921; re-en. Sec. 2991, R.C.M. 1921; re-en. Sec. 2991, R.C.M. 1935; amd. Sec. 2, Ch. 123, L. 1957; amd. Sec. 178, Ch. 147, L. 1963; amd. Sec. 2, Ch. 233, L. 1969; amd. Sec. 67, Ch. 23, L. 1975; R.C.M. 1947, 92-1103; amd. Sec. 3, Ch. 283, L. 1983; amd. Sec. 29, Ch. 613, L. 1989; Sec. 39-71-2303, MCA 1987; redes. 39-71-2336 by Code Commissioner, 1989.

Cross-References

"Department" defined, 39-71-116.

"Employer" defined, 39-71-117.

39-71-2337. State fund to submit notice of coverage within thirty days — penalty for failure. (1) The state fund shall, within 30 days after the issuance of an insurance policy, submit to the department the notice of coverage stating the effective date of the policy insuring the employer and other information the department requires.

(2) The department may assess a penalty of no more than $200 against the state fund if, as a general business practice, the state fund does not comply with the 30-day notice requirement.

History: En. Sec. 44, Ch. 613, L. 1989.

39-71-2338. Repealed. Sec. 8, Ch. 323, L. 1991.

History: En. Sec. 45, Ch. 613, L. 1989.

39-71-2339. Cancellation of coverage — thirty days' notice required. The state fund may cancel an employer's coverage under this part for failure to report payroll or pay the premiums due or for another cause provided in the insurance policy. Cancellation may take effect only by written notice to the named insured at least 30 days prior to the date of cancellation or, in cases of nonreporting of payroll or nonpayment of a premium, by failure of the employer to submit payroll reports or pay a premium within 30 days after the due date. The state fund shall notify the department of the names and effective dates of all policies canceled. However, the policy terminates on the effective date of a replacement or succeeding insurance policy issued to the insured. Nothing in this section prevents the state fund from canceling an insurance policy before a replacement policy is issued to the insured. After the cancellation date, the employer has the same status as an employer who is not enrolled under the Workers' Compensation Act unless a replacement or succeeding insurance policy has been issued.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3002, R.C.M. 1921; amd. Sec. 1, Ch. 201, L. 1935; re-en. Sec. 3002, R.C.M. 1935; amd. Sec. 10, Ch. 235, L. 1947; amd. Sec. 7, Ch. 123, L. 1957; amd. Sec. 181, Ch. 147, L. 1963; amd. Sec. 75, Ch. 23, L. 1975; amd. Sec. 1, Ch. 225, L. 1975; R.C.M. 1947, 92-1114(part); amd. Sec. 30, Ch. 613, L. 1989; Sec. 39-71-2307, MCA 1987; redes. 39-71-2339 by Code Commissioner, 1989; amd. Sec. 7, Ch. 323, L. 1991.

Cross-References

"Department" defined, 39-71-116.
"Order" defined, 39-71-116.
"Employer" defined, 39-71-117.

39-71-2340. Collection in case of default. (1) If an employer under plan No. 3 defaults in any payment to the state fund, the state fund may collect the sum due in a civil action in the name of the state. The right of action is cumulative.

(2) If an employer's right to operate has been canceled by the state fund for failure to pay premiums and the state fund finds that the property and assets of the employer are not sufficient to pay the premiums, the state fund may compromise the claim for premiums and accept a payment of an amount less than the total amount due.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3002, R.C.M. 1921; amd. Sec. 1, Ch. 201, L. 1935; re-en. Sec. 3002, R.C.M. 1935; amd. Sec. 10, Ch. 235, L. 1947; amd. Sec. 7, Ch. 123, L. 1957; amd. Sec. 181, Ch. 147, L. 1963; amd. Sec. 75, Ch. 23, L. 1975; amd. Sec. 1, Ch. 225, L. 1975; R.C.M. 1947, 92-1114(part); amd. Sec. 31, Ch. 613, L. 1989; Sec. 39-71-2308, MCA 1987; redes. 39-71-2340 by Code Commissioner, 1989.

Cross-References

"Department" defined, 39-71-116.
"Employer" defined, 39-71-117.

39-71-2341. *(Effective January 1, 1994)* **Variable pricing — higher premium by state fund for noncompliance with safety program — expenditure accounting.** (1) The state fund shall:

(a) implement variable pricing levels within individual rate classifications to reward an employer with a good safety record and penalize an employer with a poor safety record. The timeliness of an employer's payroll reporting and premium payments and other relevant factors may be considered in the placement of an employer within the variable pricing levels.

(b) provide an additional pricing level with a higher rate within the classification for those employers who do not satisfactorily implement a safety program subsequent to the provision of or attempt to provide onsite safety consultation services.

(2) The state fund may assess a surcharge of an additional 20% on premiums payable to the state fund by high-loss employers. The criteria for identifying high-loss employers must be established by the state fund board of directors by rule.

(3) The state fund shall separately account for money expended under 2-15-1708, 33-15-318, Title 39, chapter 71, part 15, 39-71-2311, and this section.

History: En. Sec. 10, Ch. 295, L. 1993.

Compiler's Comments

Effective Date: Section 16, Ch. 295, L. 1993, provided that this section is effective January 1, 1994.

39-71-2342 through 39-71-2350 reserved.

39-71-2351. Purpose of separation of state fund liability as of July 1, 1990, and of separate funding of claims before and on or after that date. (1) An unfunded liability exists in the state fund. It has existed since at least the mid-1980s and has grown each year. There have been numerous attempts to solve the problem by legislation and other methods. These attempts have alleviated the problem somewhat, but the problem has not been solved.

(2) The legislature has determined that it is necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred the unfunded liability. The legislature has determined that the most cost-effective and efficient way to provide a source of funding for and to ensure payment of the unfunded liability and the best way to administer the unfunded liability is to:

(a) separate the liability of the state fund on the basis of whether a claim is for an injury resulting from an accident that occurred before July 1, 1990, or an accident that occurs on or after that date;

(b) create an old fund liability tax provided for in 39-71-2503 and dedicate the tax money first to the repayment of bonds issued under 39-71-2354 and 39-71-2355 and then to the repayment of loans given under 39-71-2354 and 39-71-2355 and the direct payment of the costs of administering and paying claims for injuries from accidents that occurred before July 1, 1990.

(3) The legislature further determines that in order to prevent the creation of a new unfunded liability with respect to claims for injuries for accidents that occur on or after July 1, 1990, certain duties of the state fund should be clarified and legislative oversight of the state fund should be increased.

History: En. Sec. 1, Ch. 4, Sp. L. May 1990; amd. Sec. 5, Ch. 797, L. 1991; amd. Sec. 1, Ch. 637, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 637 in (2)(b), before "39-71-2503", substituted "create an old fund liability tax provided for in" for "extend the payroll tax imposed by". Amendment effective May 13, 1993.

Retroactive Applicability: Section 14, Ch. 637, L. 1993, provided: "The workers' compensation old fund liability tax imposed on sole proprietors, subchapter S. corporation shareholders, partners of partnerships, and members and managers of limited liability companies applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

39-71-2352. Separate payment structure and sources for claims for injuries resulting from accidents that occurred before July 1, 1990, and on or after July 1, 1990 — spending limit. (1) Premiums paid to the state fund based upon wages payable before July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Except as provided in 39-71-2316 and 39-71-2354, premiums paid to the state fund based upon wages payable on or after July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occur on or after July 1, 1990.

(2) The state fund shall:

(a) determine the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, and separately determine the cost of administering and paying claims for injuries resulting from accidents that occur on or after July 1, 1990;

(b) keep adequate and separate accounts of the costs determined under subsection (2)(a); and

(c) fund administrative expenses and benefit payments for claims for injuries resulting from accidents that occurred before July 1, 1990, and claims for injuries resulting from accidents that occur on or after July 1, 1990, separately from the sources provided by law.

(3) The state fund may not spend more than $3 million a year to administer claims for injuries resulting from accidents that occurred before July 1, 1990.

History: En. Sec. 2, Ch. 4, Sp. L. May 1990; amd. Sec. 6, Ch. 797, L. 1991; amd. Sec. 6, Ch. 630, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 630 near beginning of second sentence of (1), after "39-71-2316", deleted "(9)". Amendment effective July 1, 1993.

39-71-2353. Repealed. Sec. 9, Ch. 797, L. 1991.

History: En. Sec. 4, Ch. 4, Sp. L. May 1990.

39-71-2354. Use of old fund liability tax proceeds — loans — bonds. (1) Taxes collected under 39-71-2503 may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990, including the cost of repaying bonds issued and loan proceeds given under 39-71-2355 and this section. If the state fund determines that, for the next 1 or more years following the date of the determination, the tax revenue, together with funds in the account required by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, will be insufficient to administer and pay those claims, the state fund may, through its board of directors, request the budget director to certify to the board of investments that additional funding is necessary. If the budget director agrees with the state fund's board of directors that additional funding is necessary, the budget director shall certify to the board of investments the amount that the budget director determines is necessary to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Except as provided in subsection (2), the board of investments shall, at times and in amounts it considers necessary or advisable, finance the amount certified by the budget director by giving the state fund the proceeds of a loan or a bond issue to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Loans must be from reserves accumulated from premiums paid to the state fund based upon wages payable on or after July 1, 1990. The board of investments shall choose the method of financing that is most cost-effective for the state fund. A loan must bear interest at the rate that the board of investments determines the money would earn if invested on behalf of the state fund. The board of investments may also, upon request of the board of directors of the state fund, give the state fund the proceeds of a bond issue, to be used to pay off loans made under 39-71-2355 and this section. Bonds for the state fund must be workers' compensation bonds issued under 39-71-2355.

(2) The total amount of loan proceeds given to the state fund plus workers' compensation bonds issued under 39-71-2355, except bonds issued to repay loans as provided for in subsection (1), may not exceed $220 million. All loan and bond proceeds given to the state fund must be repaid to the board of investments before July 1, 2020.

History: En. Sec. 1, Ch. 797, L. 1991; amd. Sec. 9, Ch. 637, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 637 in (1), in seventh sentence after "rate", inserted "that the board of investments determines" and after "earn" substituted "if invested on behalf of the state fund" for "in the pooled investment fund required by 17-6-203". Amendment effective May 13, 1993.

Retroactive Applicability: Section 14, Ch. 637, L. 1993, provided: "The workers' compensation old fund liability tax imposed on sole proprietors, subchapter S. corporation shareholders, partners of partnerships, and members and managers of limited liability companies applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

39-71-2355. Workers' compensation bonds — loans — form — principal and interest. (1) Subject to the $220 million limit contained in 39-71-2354(2), the board of investments may not give the state fund loan proceeds or issue workers' compensation bonds unless the aggregate amount of outstanding and proposed loans and bonds can be serviced with no more than 90% of the amount of tax revenue that the department of revenue estimates will be raised by the tax imposed under 39-71-2503 during the remainder of the then current fiscal year and during each succeeding fiscal year through the end of the fiscal year in which the last then outstanding or proposed loan or bond will be repaid or retired.

(2) Bonds are limited obligations payable solely from and secured by the money deposited in the workers' compensation bond repayment account created by 39-71-2504. Each series of bonds may be issued by the board of investments at public or private sale, in denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with such provisions for the conversion or exchange, bearing interest at a rate or rates or the method of determining the rate or rates, maturing at times, not later than June 30, 2020, subject to redemption at earlier times and prices and upon notice, and payable at the office of a fiscal agency of the state, as determined by the board of investments. Any action taken by the board of investments under 39-71-2354 and this section must be approved by at least a majority vote of its members.

(3) In all other respects the board of investments is authorized to prescribe the form and terms of the bonds and shall do whatever is lawful and necessary for their issuance and payment.

(4) Bonds and any interest coupons appurtenant thereto must be signed by the members of the board of investments, and the bonds must be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the

limitations prescribed by law. The state treasurer shall keep a record of all bonds issued and sold.

(5) All loan and bond proceeds given to the state fund must be deposited to the credit of the account required by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, and may be used only for the administration and payment of those claims and for the costs of giving the loan proceeds and issuing the bonds.

History: En. Sec. 2, Ch. 797, L. 1991.

39-71-2356. Mutually agreeable lump-sum settlements. During the period beginning October 1, 1991, and ending September 30, 1992, a workers' compensation claimant and the state fund may, regardless of the lump-sum law in effect on the date of the injury, mutually agree to a lump-sum settlement of a claim. If a mutual agreement is not reached, the lump-sum law in effect on the date of the injury applies.

History: En. Sec. 3, Ch. 797, L. 1991.

39-71-2357 through 39-71-2360 reserved.

39-71-2361. Legislative audit of state fund. The legislative auditor shall annually conduct or have conducted a financial and compliance audit of the state fund, including its operations relating to claims for injuries resulting from accidents that occurred before July 1, 1990. The audit must include evaluations of the claims reservation process, the amounts reserved, and the current report of the state fund's actuary. The evaluations may be conducted by persons appointed under 5-13-305. Audit and evaluation costs are an expense of and must be paid by the state fund and must be allocated between those claims for injuries resulting from accidents that occurred before July 1, 1990, and those claims for injuries resulting from accidents that occur on or after that date.

History: En. Sec. 5, Ch. 4, Sp. L. May 1990.

39-71-2362. Authority of legislative auditor with respect to state fund. The legislative auditor shall review rates established by the board to determine if the rates are excessive, inadequate, or unfairly discriminatory. Each year, the legislative auditor shall:

(1) examine the state fund beginning no sooner than October 1 following the end of the fiscal year; and

(2) report the findings of the examination and rate review to the governor, the legislature, and the board of directors of the state fund.

History: En. Sec. 8, Ch. 630, L. 1993.

Compiler's Comments

Effective Date: Section 18(2), Ch. 630, L. 1993, provided that this section is effective July 1, 1993.

39-71-2363. Agency law — submission of budget — annual report. (1) The state fund is subject to state laws applying to state agencies, except as otherwise provided by law, and it is exempt from the provisions of The Legislative Finance Act in Title 5, chapter 12, and the provisions of Title 17, chapter 7, parts 1 through 4.

(2) The executive director shall annually submit to the board for its approval an estimated budget of the entire expense of administering the state

fund for the succeeding fiscal year, with due regard to the business interests and contract obligations of the state fund. The administrative expenditures approved by the board may not exceed 15% of the earned annual premium of the prior fiscal year. A copy of the approved budget must be delivered to the governor and the legislature.

(3) The board shall submit an annual financial report to the governor and to the legislature as provided in 5-11-210, indicating the business done by the state fund during the previous year and containing a statement of the estimated liabilities of the state fund as determined by an independent actuary.

History: En. Sec. 9, Ch. 630, L. 1993.

Compiler's Comments

Effective Date — Applicability: Section 18(1), Ch. 630, L. 1993, provided that this section was effective on passage and approval. Approved May 11, 1993. Section 18(3), Ch. 630, L. 1993, provided that this section applies to the budget for fiscal year 1994.

Part 24
Mediation

Part Cross-References

Uniform Arbitration Act, Title 27, ch. 5.

39-71-2401. Disputes — jurisdiction — settlement requirements — mediation. (1) A dispute concerning benefits arising under this chapter or chapter 72, other than the disputes described in subsection (2), must be brought before a department mediator as provided in this part. If a dispute still exists after the parties satisfy the mediation requirements in this part, either party may petition the workers' compensation court for a resolution.

(2) A dispute arising under this chapter that does not concern benefits or a dispute for which a specific provision of this chapter gives the department jurisdiction must be brought before the department.

(3) An appeal from a department order may be made to the workers' compensation court.

(4) Except as otherwise provided in this chapter, before a party may bring a dispute concerning benefits before a mediator, the parties shall attempt to settle as follows:

(a) The party making a demand shall present the other party with a specific written demand that contains sufficient explanation and documentary evidence to enable the other party to thoroughly evaluate the demand.

(b) The party receiving the demand shall respond in writing within 15 working days of receipt. If the demand is denied in whole or in part, the response shall state the basis of the denial.

(c) Upon motion of a party or upon the mediator's own motion, the mediator has the authority to dismiss a petition if he finds that either party did not comply with this subsection. A decision dismissing a petition under this subsection must be in writing and must state in detail the grounds for dismissal. The mediator's decision may be reviewed by the workers' compensation court upon motion of a party.

(d) Nothing in this subsection relieves a party of an obligation otherwise contained in this chapter.

History: En. Sec. 8, Ch. 464, L. 1987; amd. Sec. 1, Ch. 427, L. 1989; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 10, Ch. 558, L. 1991.

39-71-2402 through 39-71-2405 reserved.

39-71-2406. Purpose. The purpose of this part is to prevent when possible the filing in the workers' compensation court of actions by claimants or insurers relating to claims under chapter 71 or 72 of this title if an equitable and reasonable resolution of the dispute may be effected at an earlier stage. To achieve this purpose, this part provides for a procedure for mandatory, nonbinding mediation. It is the intent of this part that the mediation process be used to resolve cases on an informal basis at minimal cost to the parties, and to this end, the parties are required to fully present their cases at the mediation level. However, if a cause proceeds to the workers' compensation court, the parties are not precluded from presenting additional evidence before the court. If a new issue is raised at the workers' compensation court that was not raised at mediation, the court shall remand the issue to the mediator for consideration.

History: En. Sec. 52, Ch. 464, L. 1987; amd. Sec. 2, Ch. 427, L. 1989.

39-71-2407. Department authority — rules. (1) The department shall designate mediators and shall implement the provisions of this part.

(2) The department may adopt the rules necessary to implement this part. The rules may prescribe:

(a) the qualifications of mediators; and

(b) a procedure for the conduct of mediation proceedings.

(3) The cost to the department of implementing this part must be paid out of the workers' compensation administration fund.

History: En. Sec. 53, Ch. 464, L. 1987.

39-71-2408. Mandatory, nonbinding mediation. (1) Except as otherwise provided, in a dispute arising under chapter 71 or 72 of this title, the insurer and claimant shall mediate any issue concerning benefits and the mediator shall issue a report following the mediation process recommending a solution to the dispute before either party may file a petition in the workers' compensation court.

(2) The resolution recommended by the mediator is without administrative or judicial authority and is not binding on the parties.

History: En. Sec. 54, Ch. 464, L. 1987.

39-71-2409. Duties of mediator. A mediator shall assist the parties in negotiating a resolution to their dispute by:

(1) facilitating an exchange of information between the parties;

(2) assuring that all relevant information is brought forth during the mediation process;

(3) suggesting possible solutions to issues of dispute between the parties;

(4) recommending a solution; and

(5) assisting the parties to voluntarily resolve their dispute.

History: En. Sec. 55, Ch. 464, L. 1987; amd. Sec. 3, Ch. 427, L. 1989.

39-71-2410. Limitations on mediation proceedings. (1) Except as may be necessary for the workers' compensation court to rule on issues arising under 39-71-2401(4)(c) or 39-71-2411(7)(c), mediation proceedings are:

(a) held in private;
(b) informal and held without a verbatim record; and
(c) confidential.

(2) All communications, verbal or written, from the parties to the mediator and any information and evidence presented to the mediator during the proceeding are confidential.

(3) A mediator's files and records are closed to all but the parties.

(4) (a) A mediator may not be called to testify in any proceeding concerning the issues discussed in the mediation process.

(b) Neither the mediator's report nor any of the information or recommendations contained in it are admissible as evidence in any action subsequently brought in any court of law.

(5) Notwithstanding subsections (1) through (4), a mediator may issue a report and the parties and the mediator may be required to attend a conference before the workers' compensation court as set forth in 39-71-2411.

History: En. Sec. 56, Ch. 464, L. 1987; amd. Sec. 4, Ch. 427, L. 1989; amd. Sec. 11, Ch. 558, L. 1991.

39-71-2411. Mediation procedure. (1) Except as otherwise provided, a claimant or an insurer having a dispute relating to benefits under chapter 71 or 72 of this title may petition the department for mediation of the dispute.

(2) A party may take part in mediation proceedings with or without representation.

(3) The mediator shall review the department file for the case and may receive any additional documentation or argument either party submits.

(4) The mediator shall request that each party offer argument summarizing the party's position. A party's argument must fully present the party's case. The argument is not limited by the rules of evidence.

(5) After the parties have presented all their information and argument to the mediator, he shall recommend a solution to the parties within a reasonable time to be established by rule.

(6) A party shall notify the mediator within 45 days of the mailing of his report whether the party accepts the mediator's recommendation. If either party does not accept the mediator's recommendation, the party may petition the workers' compensation court for resolution of the dispute.

(7) (a) If a mediator determines that either party failed to cooperate in the mediation process, the mediator shall prepare a written report setting forth the determination and the grounds for the determination. The report must be mailed to the parties and to the workers' compensation court. Unless a party disputes the determination as set forth in subsection (7)(c), the parties shall repeat the mediation process, but only one time.

(b) A mediator may determine that a party has failed to cooperate in the mediation process only if the party failed to:

(i) supply information or offer a summary of the party's position as reasonably requested by the mediator;

(ii) attend scheduled mediation conferences unless excused by the mediator; or

(iii) listen to and review the information and position offered by the opposing party.

(c) If a party disputes a mediator's determination that the party failed to cooperate in the mediation process, the party may file a petition with the workers' compensation court. Upon receipt of a petition, the court shall summon the parties and the mediator to determine by oral discussion whether the mediator's determination of noncooperation is supportable. If the court finds that the mediator's determination is supportable, the court may order the parties to attempt a second time to mediate their dispute.

History: En. Sec. 57, Ch. 464, L. 1987; amd. Sec. 5, Ch. 427, L. 1989; amd. Sec. 64, Ch. 613, L. 1989.

Part 25

Employer's Old Fund Liability Tax

39-71-2501. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of revenue provided for in 2-15-1301.

(2) "Employee" includes an officer, employee, or elected public official of the United States, the state of Montana, or any political subdivision of the United States or the state of Montana or any agency or instrumentality of the United States, the state of Montana, or a political subdivision of the United States or the state of Montana. The term "employee" also includes an officer of a corporation.

(3) (a) "Employer" means, except as provided in subsection (3)(b), the person for whom an individual performs or performed any service, of whatever nature, as an employee of the person.

(b) If the person for whom the individual performs or performed the service does not have control of the payment of the wages for the service, the term employer means the person who has control of the payment of wages.

(4) "Employer's payroll" means wages paid for each of the calendar quarters ending March 31, June 30, September 30, and December 31.

(5) "State fund" means the state compensation insurance fund.

(6) "Tax" means the workers' compensation old fund liability tax provided for in 39-71-2503, created to address the unfunded liability for claims for injuries resulting from accidents that occurred before July 1, 1990.

(7) "Tax account" means the workers' compensation tax account created by 39-71-2504.

(8) "Wages" means all remuneration for services performed by an employee for an employer, including the cash value of all remuneration paid in any medium other than cash. The term does not include remuneration paid:

(a) for casual labor not in the course of the employer's trade or business performed in any calendar quarter by an employee unless the cash remuneration paid for the service is $50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. For purposes of this subsection (8)(a), an individual is considered to be regularly employed by an employer during a calendar quarter only if:

(i) on each of 24 days during the calendar quarter, the individual performs service not in the course of the employer's trade or business for the employer for some portion of the day; and

(ii) the individual was regularly employed, as determined under subsection (8)(a)(i), by the employer in the performance of service during the preceding calendar quarter;

(b) for services not in the course of the employer's trade or business, to the extent that remuneration is paid in any medium other than cash, when the payments are in the form of lodging or meals and the payments are received by the employee at the request of and for the convenience of the employer;

(c) to or for an employee as a payment for or a contribution toward the cost of any group plan or program that benefits the employee, including but not limited to life insurance, hospitalization insurance for the employee or the employee's dependents, and employees' club activities;

(d) as wages or compensation, the taxation of which is prohibited by federal law.

History: En. Sec. 1, Ch. 664, L. 1987; amd. Sec. 57, Ch. 83, L. 1989; amd. Sec. 43, Ch. 613, L. 1989; amd. Sec. 14, Ch. 4, Sp. L. May 1990; amd. Sec. 14, Ch. 630, L. 1993; amd. Sec. 2, Ch. 637, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 637 inserted definitions of employee and wages; in definition of employer, in (a), substituted language defining the term as the person performing any service for former language that read: "has the meaning set forth in 39-71-117" and inserted (b) defining employer as person in control of wage payments if person performing service is not in control of service wage payment; substituted employer's payroll for payroll as defined term, after "means" substituted "wages paid" for "the payroll of an employer", and after "December 31" deleted "for all employments covered under 39-71-401"; and in definition of tax, before "tax provided", substituted "old fund liability" for "payroll" and after "39-71-2503" inserted "created to address the unfunded liability for claims for injuries resulting from accidents that occurred before July 1, 1990". Amendment effective May 13, 1993.

Name Change — Directions to Code Commissioner: Section 14, Ch. 630, L. 1993, provided: "Wherever the name "state compensation mutual insurance fund", meaning the fund established in 39-71-2313, appears in the Montana Code Annotated or in legislation enacted by the 1993 legislature, the code commissioner is directed to change the name to "state compensation insurance fund"." The phrase appeared in this section and was changed by the Code Commissioner as directed.

Retroactive Applicability: Section 14, Ch. 637, L. 1993, provided: "The workers' compensation old fund liability tax imposed on sole proprietors, subchapter S. corporation shareholders, partners of partnerships, and members and managers of limited liability companies applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

39-71-2502. Findings and purpose. (1) Based on current liabilities and actuarial analysis, an unfunded liability presently exists in the state fund with regard to claims for injuries resulting from accidents that occurred before July 1, 1990, and it may increase. While legislative action is required to correct the causes of the unfunded liability, those actions will not provide sufficient funds to permit the state fund to pay its existing liabilities and obligations in a timely manner from premium and investment income available to the state fund. Therefore, it is necessary to provide other sources of funding for the unfunded liability in addition to premium and investment income.

(2) The police power of the state extends to all great public needs. The state, in the exercise of its police power, has determined that it is greatly and immediately necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred

the unfunded liability described in subsection (1). The burden of this unfunded liability should not be borne solely by those employers who have insured with the state fund because the availability of insurance to all employers through the state fund has benefited all those receiving compensation in Montana. This unfunded liability should not be borne only by employers. Therefore, all employers, employees, sole proprietors, subchapter S. corporation shareholders, partners of partnerships, and members or managers of limited liability companies should share in the cost of the unfunded liability.

(3) The purpose of this part is to provide supplemental sources of financing for the unfunded liability.

History: En. Sec. 2, Ch. 664, L. 1987; amd. Sec. 15, Ch. 4, Sp. L. May 1990; amd. Sec. 3, Ch. 637, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 637 in (1), in last sentence after "provide", substituted "other sources" for "a source"; in (2), in fourth sentence after "benefited all", substituted "those receiving compensation in Montana" for "employers who have workers' compensation coverage", inserted fifth sentence providing that unfunded liability not be limited to employers, and in last sentence, after "employers", substituted "employees, sole proprietors, subchapter S. corporation shareholders, partners of partnerships, and members or managers of limited liability companies" for "who have employments covered by the workers' compensation laws"; and in (3) substituted "sources" for "source". Amendment effective May 13, 1993.

Retroactive Applicability: Section 14, Ch. 637, L. 1993, provided: "The workers' compensation old fund liability tax imposed on sole proprietors, subchapter S. corporation shareholders, partners of partnerships, and members and managers of limited liability companies applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

39-71-2503. Workers' compensation old fund liability tax. (1) (a) There is imposed on each employer a workers' compensation old fund liability tax in an amount equal to 0.28%, plus the additional amount of old fund liability tax provided in 39-71-2505, of the employer's payroll in the preceding calendar quarter, except that if an employer is subject to 15-30-204(2), the tax is an amount equal to 0.28%, plus the additional amount of old fund liability tax provided in 39-71-2505, of the employer's payroll in the preceding week.

(b) There is imposed on each employee, except workers engaged in the rail industry who are under the jurisdiction of the federal railroad administration, United States department of transportation, an old fund liability tax, as provided in 39-71-2505, on the employee's wages in the preceding calendar quarter.

(c) There is imposed on each business of a sole proprietor, on each subchapter S. corporation shareholder, on each partner of a partnership, and on each member or manager of a limited liability company a workers' compensation old fund liability tax, as provided in 39-71-2505, on the profit of each separate business of a sole proprietor and on the distributive share of ordinary income of each shareholder, partner, or member or manager.

(d) A corporate officer of a subchapter S. corporation who receives wages as an employee of the corporation shall pay the old fund liability tax on both the wages and any distributive share of ordinary income at the employee rate. The subchapter S. corporation is not liable for the tax on the corporate officer's wages.

(e) A corporate officer of a closely held corporation who meets the stock ownership test under section 542(a)(2) of the Internal Revenue Code and receives wages as an employee of the corporation is required to pay the old fund liability tax only on the wages received. The corporation is not liable for the tax on the corporate officer's wages.

(f) This old fund liability tax must be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990. If one or more loans or bonds are outstanding, the legislature may not reduce the security for repayment of the outstanding loans or bonds, except that the legislature may forgive payment of a tax or reduce a tax rate for any 12-month period if the workers' compensation bond repayment account contains on the first day of that period an amount, regardless of the source, that is in excess of the reserve maintained in the account and that is equal to the amount needed to pay and dedicated to the payment of the principal, premium, and interest that must be paid during that period on the outstanding loans or bonds.

(g) Each employer shall maintain the records the department requires concerning the old fund liability tax. The records are subject to inspection by the department and its employees and agents during regular business hours.

(h) An employee does not have any right of action against an employer for any money deducted and withheld from the employee's wages and paid to the state in compliance or intended compliance with this section.

(i) The employer is liable to the state for any amount of old fund liability taxes, plus interest and penalty, when the employer fails to withhold from an employee's wages or fails to remit to the state the old fund liability tax required by this section.

(j) A sole proprietor, subchapter S. corporation shareholder, partner of a partnership, or member or manager of a limited liability company is liable to the state for the old fund liability tax, plus interest and penalty, when the sole proprietor, shareholder, partner, or member or manager fails to remit to the state the old fund liability tax required by this section.

(2) All collections of the tax must be deposited as received in the tax account. The tax is in addition to any other tax or fee assessed against persons subject to the tax.

(3) (a) On or before the last day of April, July, October, and January, each employer subject to the tax shall file a return in the form and containing the information required by the department and, except as provided in subsection (3)(b), pay the amount of tax required by this section to be paid on the employer's payroll for the preceding calendar quarter and in addition shall remit withholdings for employees' old fund liability taxes at the same time.

(b) An employer subject to 15-30-204(2) shall remit to the department a weekly payment with its weekly withholding tax payment in the amount required by subsection (1)(a) and shall remit withholdings for employees' old fund liability taxes at the same time.

(c) Tax payments required by subsections (1)(a) and (1)(b) must be made with the return filed pursuant to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any remainder to the workers' compensation tax account provided in 39-71-2504.

(d) Tax payments due from sole proprietors, subchapter S. corporation shareholders, partners of partnerships, and members or managers of limited liability companies must be made with and at the same time as the returns filed pursuant to 15-30-144 and 15-30-241. The department shall first credit a payment to the liability under 15-30-103 or 15-30-202 and shall then credit any remainder to the workers' compensation tax account provided in 39-71-2504.

(4) An employer's officer or employee with the duty to collect, account for, and pay to the department the amounts due under this section who fails to pay an amount is liable to the state for the unpaid amount and any penalty and interest relating to that amount.

(5) Returns and remittances under subsection (3) and any information obtained by the department during an audit are subject to the provisions of 15-30-303, but the department may disclose the information to the department of labor and industry under circumstances and conditions that ensure the continued confidentiality of the information.

(6) The department of labor and industry and the state fund shall, on July 1, 1991, or as soon after that date as possible, give the department a list of all employers having coverage under any plan administered or regulated by the department of labor and industry and the state fund. After the lists have been given to the department, the department of labor and industry and the state fund shall update the lists weekly. The department of labor and industry and the state fund shall provide the department with access to their computer data bases and paper files and records for the purpose of the department's administration of the tax imposed by this section.

(7) The provisions of Title 15, chapter 30, not in conflict with the provisions of this part regarding administration, remedies, enforcement, collections, hearings, interest, deficiency assessments, credits for overpayment, statute of limitations, penalties, estimated taxes, and department rulemaking authority apply to the tax, to employers, to employees, to sole proprietors, to subchapter S. corporation shareholders, to partners of partnerships, to members or managers of limited liability companies, and to the department.

History: En. Sec. 3, Ch. 664, L. 1987; amd. Sec. 16, Ch. 4, Sp. L. May 1990; amd. Sec. 1, Ch. 220, L. 1991; amd. Sec. 7, Ch. 797, L. 1991; amd. Sec. 4, Ch. 637, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 637 in (1)(a), before "tax", substituted "old fund liability" for "payroll", in two places, after "0.28%", inserted "plus the additional amount of old fund liability tax provided in 39-71-2505", and after "quarter" deleted "for all employments covered under 39-71-401"; inserted (1)(b) imposing old fund liability tax on employees; inserted (1)(c) imposing old fund liability tax on sole proprietor, subchapter S. shareholder, partner, and limited liability company member or manager; inserted (1)(d) requiring subchapter S. corporation officer to pay liability tax on wages and ordinary income but exempting corporation from paying tax on officer's wages; inserted (1)(e) requiring officer of closely held corporation meeting stock ownership test who receives wages as employee to pay liability tax on wages received but exempting corporation from paying tax on officer's wages; at beginning of first sentence of (1)(f) inserted "This old fund liability", in second sentence, after "outstanding", deleted "the tax must be continued at the 0.28% rate and" and after "may not" substituted "reduce" for "modify the tax rate, the use of the tax proceeds, or this section in a manner that reduces", and deleted former last sentence that read: "The legislature may not increase the tax rate except upon a two-thirds vote of each house"; in (1)(g), in first sentence at end, substituted "old fund liability tax" for "employer's payroll"; inserted (1)(h) prohibiting employee right of action against employer; inserted (1)(i) relating to liability of employer for failing to withhold required liability tax; inserted (1)(j) relating to liability of sole proprietor, subchapter S. shareholder, partner, or limited liability company member or manager for failing to withhold required liability tax; in (2), in first sentence after "tax", deleted "are appropriated to and" and in second sentence, after "against", substituted "persons" for "employers"; in (3)(a), after "quarter", inserted "and in addition shall remit withholdings for employees' old fund liability taxes at the same time"; in (3)(b), at end, inserted "and shall remit withholdings for employees' old fund liability taxes at the same time"; at beginning of (3)(c) substituted "Tax payments" for "A tax payment" and after "(1)(a)" inserted "and (1)(b)"; inserted (3)(d) requiring tax payments to be made with returns and requiring payment credit to liability before credit to workers' compensation tax account; in (4), before "fails", deleted "willfully"; in (7), after "penalties", inserted "estimated taxes" and after "employers" inserted "to employees, to sole proprietors, to subchapter S. corporation shareholders, to partners of partnerships, to members or managers of limited liability companies"; and made minor changes in style. Amendment effective May 13, 1993.

Applicability: Section 13, Ch. 637, L. 1993, provided: "The employers' and the employees' portions of the old fund liability tax imposed by [sections 4 and 5] [39-71-2503 and 39-71-2505] commence on July 1, 1993."

Retroactive Applicability: Section 14, Ch. 637, L. 1993, provided: "The workers' compensation old fund liability tax imposed on sole proprietors, subchapter S. corporation shareholders, partners of partnerships, and members and managers of limited liability companies applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

39-71-2504. Workers' compensation tax account. (1) There is a workers' compensation tax account in the state special revenue fund. The workers' compensation tax account consists of a tax account and a workers' compensation bond repayment account.

(2) All collections of the tax imposed under 39-71-2503, interest and penalties on the tax, and revenue appropriated to the workers' compensation tax account under section 11, Chapter 9, Special Laws of June 1989, must, in accordance with the provisions of 15-1-501(6), be deposited in the workers' compensation tax account. All money deposited in the workers' compensation tax account must be credited to the workers' compensation bond repayment account to the extent necessary to pay the principal of and redemption premium and interest due on workers' compensation bonds issued under 39-71-2354 and 39-71-2355 and to establish and maintain a reserve for the bonds equal to the maximum annual principal of and interest on the bonds in any future year. The balance in the workers' compensation bond repayment account must be credited to the tax account within the workers' compensation tax account and is statutorily appropriated, as provided in 17-7-502, to the state fund to be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990.

History: En. Sec. 4, Ch. 664, L. 1987; amd. Sec. 10, Ch. 9, Sp. L. June 1989; amd. Sec. 17, Ch. 4, Sp. L. May 1990; amd. Sec. 8, Ch. 797, L. 1991; amd. Sec. 33, Ch. 455, L. 1993; amd. Sec. 6, Ch. 637, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 455 in first sentence of (2) inserted "in accordance with the provisions of 15-1-501(6)"; and made minor changes in style. Amendment effective April 21, 1993.

Chapter 637 in first sentence of (2), before "interest", inserted "imposed under 39-71-2503". Amendment effective May 13, 1993.

Retroactive Applicability: Section 35, Ch. 455, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable."

Section 14, Ch. 637, L. 1993, provided: "The workers' compensation old fund liability tax imposed on sole proprietors, subchapter S. corporation shareholders, partners of partnerships, and members and managers of limited liability companies applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

39-71-2505. Payment of unfunded liability for injuries resulting from accidents occurring before July 1, 1990. (1) Beginning July 1, 1993, the state fund shall pay for the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, not covered by any other funding source, by borrowing from the reserves accumulated from premiums paid to the state fund, based upon wages payable on or after July 1, 1990, and invested by the board of investments, from time to time, the amount that the state fund determines and the budget director certifies, as provided in 39-71-2354, will be needed to pay for administering and paying the claims for the ensuing year.

(2) (a) In January of each year, prior to the start of the following fiscal year, the state fund shall forward to the budget director information pertaining to the amount that the state fund will borrow for the ensuing fiscal year to pay for the cost of administering and paying claims for the injuries provided for in subsection (1), except that for fiscal year 1994, the information on the amount to be borrowed by the state fund must be forwarded to the budget director no later than 45 days prior to the start of the fiscal year. In addition, the state fund shall forward to the budget director the schedule of projected liability payments and cash needs on which the amount to be borrowed is based. The schedule must include but is not limited to total projected liability payments, loans and bond debt payments, revenue from the old fund liability tax provided for in 39-71-2503, projected fiscal yearend cash, and the projected fiscal yearend cash for the year 2007.

(b) (i) There is imposed on each employer a workers' compensation old fund liability tax as provided in 39-71-2503. For fiscal year 1994, the employer old fund liability tax is an amount equal to 0.5% of the employer's payroll in the preceding calendar quarter.

(ii) For fiscal year 1994, the employee old fund liability tax is an amount equal to 0.2% of the employee's wages in the preceding calendar quarter.

(iii) For the tax year beginning after December 31, 1992, the old fund liability tax is an amount equal to 0.1% on the profit of each separate business of a sole proprietor and on the distributive share of ordinary income of each subchapter S. corporation shareholder, partner of a partnership, or member or manager of a limited liability company. For tax years beginning after December 31, 1993, the old fund liability tax rate is increased from 0.1% to 0.2%. Every person subject to taxation under this subsection (2)(b)(iii) shall pay a minimum tax of not less than $25 per entity.

(iv) The rate of the employer old fund liability tax determined by this section includes the 0.28% employer old fund liability tax provided for in 39-71-2503.

(v) (A) The employer old fund liability tax that is in excess of the 0.28% tax provided for in 39-71-2503 terminates at the end of fiscal year 2007.

(B) If the debt service account has sufficient funds to pay outstanding bonds or if no bonds are outstanding, the old fund liability tax may not be imposed after the end of fiscal year 2007.

(vi) The old fund liability tax described in this section must be collected and deposited as provided in 39-71-2503 and 39-71-2504.

(3) If in any January the cumulative projected amount to be borrowed by the state fund from reserves accumulated from premiums paid to the state fund based on wages payable on or after July 1, 1990, to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990, not including any outstanding bonds as of May 13, 1993, exceeds $80 million for the following fiscal year, the tax rate on the persons subject to the old fund liability tax must be increased by 0.05% for the following fiscal year over the current tax rate. If in any January the projected fiscal yearend cash balance for the current fiscal year exceeds $25 million, the tax rate on the persons subject to the old fund liability tax must be reduced by 0.05% from the current tax rate for the following fiscal year.

(4) The total tax on the persons subject to the old fund liability tax may not exceed 0.75%.

(5) The budget director shall certify the cash flow projections of the state fund required by this section and shall notify the department of revenue no later than April 1 of the rate of tax to be collected pursuant to this section.

History: En. Sec. 5, Ch. 637, L. 1993.

Compiler's Comments

Applicability: Section 13, Ch. 637, L. 1993, provided: "The employers' and the employees' portions of the old fund liability tax imposed by [sections 4 and 5] [39-71-2503 and 39-71-2505] commence on July 1, 1993."

Retroactive Applicability: Section 14, Ch. 637, L. 1993, provided: "The workers' compensation old fund liability tax imposed on sole proprietors, subchapter S. corporation shareholders, partners of partnerships, and members and managers of limited liability companies applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992."

Effective Date: Section 16, Ch. 637, L. 1993, provided that this section is effective on passage and approval. Approved May 13, 1993.

Part 26

Self-Insurers Guaranty Fund

Part Cross-References

Insurance guaranty associations, Title 33, ch. 10.

39-71-2601. Short title. This part may be cited as the "Montana Self-Insurers Guaranty Fund Act".

History: En. Sec. 1, Ch. 244, L. 1989.

39-71-2602. Purpose — construction. (1) The purposes of this part are to provide a mechanism for the payment of covered workers' compensation claims of employers bound by compensation plan No. 1 who are unable to pay the claims because of insolvency, to establish a fund from which the claims may be paid, and to establish a board to assess the cost of the protection among those employers.

(2) This part must be liberally construed to effect its purposes. The statement of its purposes constitutes an aid and a guide to the act's interpretation.

History: En. Sec. 2, Ch. 244, L. 1989.

39-71-2603. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of directors of the Montana self-insurers guaranty fund.

(2) "Fund" means the Montana self-insurers guaranty fund established pursuant to 39-71-2609.

(3) "Insolvent private self-insurer" means an employer:

(a) (i) that is unable to pay workers' compensation claims because:

(A) it has been determined to be insolvent by a court of competent jurisdiction; or

(B) bankruptcy proceedings have been instituted by or against it; or

(ii) whose claims are not being paid on its behalf; and

(b) whose security has been exhausted pursuant to 39-71-2108.

(4) "Member" means an employer bound by compensation plan No. 1 that participates in the Montana self-insurers guaranty fund.

(5) "Private self-insurer" means a private employer bound by compensation plan No. 1 that has secured the payment of workers' compensation claims pursuant to 39-71-2101.

History: En. Sec. 3, Ch. 244, L. 1989.

39-71-2604. Board of directors of fund. (1) There is a board of directors of the Montana self-insurers guaranty fund.

(2) The board consists of five members who are representatives of private self-insurers and who shall serve staggered 4-year terms.

(3) Board members are elected by the members of the fund, with each member having one vote.

(4) Board members may be reimbursed from the assets of the fund for the actual expenses incurred in connection with their duties as board members.

History: En. Sec. 4, Ch. 244, L. 1989.

39-71-2605 through 39-71-2608 reserved.

39-71-2609. Establishment of fund — employer participation required. (1) There is a nonprofit unincorporated legal entity, to be known as the Montana self-insurers guaranty fund, financed as provided in 39-71-2615 and 39-71-2616. The fund shall perform its functions under rules adopted by, and powers exercised through, the board established under 39-71-2604.

(2) A private self-insurer shall participate as a member in the fund as a condition of the authority to self-insure in this state under 39-71-2101.

History: En. Sec. 5, Ch. 244, L. 1989; amd. Sec. 5, Ch. 163, L. 1991.

39-71-2610. Rulemaking — powers of fund. (1) The board shall establish the rules necessary to carry out the purposes of this part and to meet the responsibilities of the fund.

(2) The fund may carry out its responsibilities directly or by contract. It may, if it considers necessary, purchase services and insurance and borrow funds.

(3) The fund may receive confidential information concerning the financial condition of a private self-insurer whose liabilities to pay compensation may devolve upon the fund. The board shall adopt rules to prevent dissemination of the information.

History: En. Sec. 6, Ch. 244, L. 1989.

39-71-2611. Duties, liabilities, and rights of fund. (1) The fund shall assume the workers' compensation obligations of a private self-insurer that come due after the private self-insurer has been determined to be an insolvent self-insurer.

(2) The fund is not liable for the payment of any penalties or interest assessed for any act or omission of a person acting on behalf of the fund.

(3) The fund is a party in interest in all proceedings involving workers' compensation claims against an insolvent private self-insurer whose workers' compensation obligations have been paid or assumed by the fund. The fund has the same rights and defenses as the insolvent private self-insurer, including but not limited to all of the following:

(a) to appear and deny, defend, and appeal a claim; and

(b) to receive notice of, investigate, adjust, compromise, settle, and pay a claim.

(4) The fund shall concur in department decisions relating to allowing an employer to self-insure.

History: En. Sec. 7, Ch. 244, L. 1989; amd. Sec. 6, Ch. 163, L. 1991.

39-71-2612 through 39-71-2614 reserved.

39-71-2615. Initial fee — assessment. (1) A private self-insurer shall pay to the fund an initial fee of $1,000 upon becoming a member. Thereafter, a member's financial obligation to the fund must be established by assessment as provided in subsection (2).

(2) The fund may assess each of its members a pro rata share of the amount necessary to carry out the purposes of this part. However, the total annual assessments in any calendar year may not exceed 5% of the indemnity compensation paid by each member during the previous calendar year. Funds obtained by assessment pursuant to this subsection may be used only for the purposes of this part.

(3) A former member is liable for assessments made by the fund for 3 years following the date the member's status as a private self-insurer is terminated, whether the termination is by action of the private self-insurer or the department. A former member's assessment must be based on the compensation paid during the last approval year immediately preceding the member's termination of its status as a private self-insurer.

(4) The board shall certify to the department the collection and receipt of assessments, noting any delinquencies. The board shall take appropriate action to collect a delinquent assessment.

History: En. Sec. 8, Ch. 244, L. 1989; amd. Sec. 15, Ch. 555, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 555 in second sentence of (3), before "immediately", substituted "compensation paid during the last approval year" for "12-month period". Amendment effective July 1, 1993.

39-71-2616. Reimbursement for obligations paid and assumed. (1) The fund shall obtain reimbursement from an insolvent private self-insurer up to the amount of the insolvent private self-insurer's workers' compensation obligations paid and assumed by the fund. This includes reimbursement for reasonable administrative and legal costs.

(2) This right, as subrogee of any claimants in any action to collect against the private self-insurer as the debtor, includes but is not limited to a right to a claim for wages and other necessities of life advanced to any claimants.

(3) The fund may obtain from the security deposit or proceeds of other workers' compensation insurance of an insolvent private self-insurer the amount of the insolvent private self-insurer's compensation obligations, including reasonable administrative and legal costs, paid or assumed by the fund.

(4) The fund may bring an action against any other insurance carrier and person to recover compensation paid and liability assumed by the fund, including but not limited to:

(a) any excess insurance carrier of the private self-insurer; and

(b) any person whose negligence or breach of any obligation contributed to any underestimation of the private self-insurer's total accrual of liability as reported to the department.

History: En. Sec. 9, Ch. 244, L. 1989.

39-71-2617. Tax exemption. The fund is exempt from payment of all fees and taxes levied by this state or by any city, county, or other political subdivision, except taxes levied on real or personal property.

History: En. Sec. 10, Ch. 244, L. 1989.

39-71-2618. Immunity. There is no liability on the part of, and no claim for relief of any nature may arise against, any member, the fund, its agents or employees, or the board for any action taken by them in the performance of their powers and duties under this part.

History: En. Sec. 11, Ch. 244, L. 1989.

39-71-2619. Notification of insolvency by private self-insurer. As a condition of the privilege to self-insure pursuant to Title 39, chapter 71, part 21, a private self-insurer shall agree in writing to notify the department and the fund within 24 hours of the filing of any bankruptcy or determination of insolvency relating to that private self-insurer.

History: En. Sec. 12, Ch. 244, L. 1989.

39-71-2620. Audit requirement. Biannually or within 6 months after the close of any fiscal year in which the fund has assumed the workers' compensation obligations of an insolvent private self-insurer, the fund shall:

(1) contract for an independent certified audit of the financial activities of the fund; and

(2) report on the financial status of the fund to the department and to fund members.

History: En. Sec. 13, Ch. 244, L. 1989.

Parts 27 and 28 reserved

Part 29

Workers' Compensation Judge

39-71-2901. Location of office — court powers. (1) The principal office of the workers' compensation judge shall be in the city of Helena.

(2) The workers' compensation court has power to:

(a) preserve and enforce order in its immediate presence;

(b) provide for the orderly conduct of proceedings before it and its officers;

(c) compel obedience to its judgments, orders, and process in the same manner and by the same procedures as in civil actions in district court;

(d) compel the attendance of persons to testify; and

(e) punish for contempt in the same manner and by the same procedures as in district court.

History: En. 92-850 by Sec. 4, Ch. 537, L. 1975; R.C.M. 1947, 92-850; amd. Sec. 58, Ch. 464, L. 1987.

Cross-References

Rules describing agency organization and procedures, 2-4-201.

39-71-2902. Operating expenses. The workers' compensation judge may employ such employees as may be required to carry out the duties under this part. All expenditures of the workers' compensation judge, including but not limited to salaries, traveling expenses, office rent, office equipment, and supplies, shall be paid out of the workers' compensation administration fund.

History: En. 92-851 by Sec. 5, Ch. 537, L. 1975; R.C.M. 1947, 92-851.

39-71-2903. Administrative procedure act and rules of evidence applicable. All proceedings and hearings before the workers' compensation judge shall be in accordance with the appropriate provisions of the Montana Administrative Procedure Act. The workers' compensation judge is bound by common law and statutory rules of evidence.

History: En. 92-852 by Sec. 6, Ch. 537, L. 1975; R.C.M. 1947, 92-852(1); amd. Sec. 59, Ch. 464, L. 1987.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

39-71-2904. Direct appeal to supreme court. Notwithstanding 2-4-701 through 2-4-704, an appeal from a final decision of the workers' compensation judge shall be filed directly with the supreme court of Montana in the manner provided by law for appeals from the district court in civil cases.

History: En. 92-852 by Sec. 6, Ch. 537, L. 1975; R.C.M. 1947, 92-852(2).

39-71-2905. Petition to workers' compensation judge. A claimant or an insurer who has a dispute concerning any benefits under chapter 71 of this title may petition the workers' compensation judge for a determination of the dispute after satisfying dispute resolution requirements otherwise provided in this chapter. The judge, after a hearing, shall make a determination of the dispute in accordance with the law as set forth in chapter 71 of this title. If the dispute relates to benefits due a claimant under chapter 71, the judge shall fix and determine any benefits to be paid and specify the manner of payment. After parties have satisfied dispute resolution requirements provided elsewhere in this chapter, the workers' compensation judge has exclusive jurisdiction to make determinations concerning disputes under chapter 71, except as provided in 39-71-317 and 39-71-516. The penalties and assessments allowed against an insurer under chapter 71 are the exclusive penalties and assessments that can be assessed by the workers' compensation judge against an insurer for disputes arising under chapter 71.

History: En. 92-848 by Sec. 2, Ch. 537, L. 1975; R.C.M. 1947, 92-848(1); amd. Sec. 4, Ch. 63, L. 1979; amd. Sec. 11, Ch. 601, L. 1985; amd. Sec. 60, Ch. 464, L. 1987.

Cross-References
"Insurer" defined, 39-71-116.

39-71-2906. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. 92-848 by Sec. 2, Ch. 537, L. 1975; R.C.M. 1947, 92-848(2).

39-71-2907. Increase in award for unreasonable delay or refusal to pay. (1) The workers' compensation judge may increase by 20% the full amount of benefits due a claimant during the period of delay or refusal to pay, when:

(a) the insurer agrees to pay benefits but unreasonably delays or refuses to make the agreed-upon payments to the claimant; or

(b) prior or subsequent to the issuance of an order by the workers' compensation judge granting a claimant benefits, the insurer unreasonably delays or refuses to make the payments.

(2) The question of unreasonable delay or refusal shall be determined by the workers' compensation judge, and such a finding constitutes good cause to rescind, alter, or amend any order, decision, or award previously made in the cause for the purpose of making the increase provided herein.

(3) A finding of unreasonableness under this section does not constitute a finding that the insurer acted in bad faith or violated the unfair trade practices provisions of Title 33, chapter 18.

History: En. 92-849 by Sec. 3, Ch. 537, L. 1975; R.C.M. 1947, 92-849; amd. Sec. 5, Ch. 63, L. 1979; amd. Sec. 61, Ch. 464, L. 1987; amd. Sec. 1, Ch. 174, L. 1991.

Cross-References
"Insurer" defined, 39-71-116.
"Order" defined, 39-71-116.

39-71-2908. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. 92-848 by Sec. 2, Ch. 537, L. 1975; R.C.M. 1947, 92-848(3).

39-71-2909. Authority to review, diminish, or increase awards. The judge may, upon the petition of a claimant or an insurer that the disability of the claimant has changed, review, diminish, or increase, in accordance with the law on benefits as set forth in chapter 71 of this title, any benefits previously awarded by the judge.

History: En. 92-848 by Sec. 2, Ch. 537, L. 1975; R.C.M. 1947, 92-848(4); amd. Sec. 6, Ch. 63, L. 1979; amd. Sec. 62, Ch. 464, L. 1987.

Cross-References
"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.
"Order" defined, 39-71-116.

39-71-2910. Stay pending posttrial motions and appeal. (1) Upon the filing of a judgment or order of the workers' compensation judge, a party may apply to the workers' compensation judge, upon notice or ex parte, for a stay of execution of the judgment or order. The stay may be for a period of time and be under conditions as the judge considers proper. A stay of execution under this subsection may not extend for more than 30 days following the judge's disposition of posttrial motions.

(2) The appellant may request of the workers' compensation judge or the supreme court, upon service of a notice of appeal, a stay of execution of the judgment or order pending resolution of the appeal. The appellant may request a stay by presenting a supersedeas bond to the workers' compensation

judge and obtaining his approval of the bond. The bond must have two sufficient sureties or a corporate surety as authorized by law. A court granting a stay may waive the bond requirement. The procedure for requesting a stay and posting a supersedeas bond must be the same as the procedure in Rule 7(b), Montana Rules of Appellate Procedure.

History: **En. Sec. 1, Ch. 74, L. 1989.**

39-71-2911 through 39-71-2913 reserved.

39-71-2914. Signing of petitions, pleadings, motions, and other papers — requirements — sanctions. (1) Every petition, pleading, motion, or other paper of a party appearing before the workers' compensation court and represented by an attorney must be signed by at least one attorney of record in his individual name. The signer's address also must be stated.

(2) A party who is not represented by an attorney shall sign his petition, pleading, motion, or other paper and state his address.

(3) The signature of an attorney or party constitutes a certificate by him that:

(a) he has read the petition, pleading, motion, or other paper;

(b) to the best of his knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact;

(c) it is warranted by existing law or by a good faith argument for the extension, modification, or reversal of existing law; and

(d) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(4) If a petition, pleading, motion, or other paper is signed in violation of this section, the court, upon motion or upon its own initiative, shall impose an appropriate sanction upon the person who signed it, a represented party, or both. The sanction may include an order to pay to the other party or parties the amount of the reasonable expense incurred because of the filing of the petition, pleading, motion, or other paper, including reasonable attorney fees.

History: **En. Sec. 63, Ch. 464, L. 1987.**

CHAPTER 72

OCCUPATIONAL DISEASE ACT OF MONTANA

Part 1 — General Provisions

39-72-101. Short title.
39-72-102. Definitions.
39-72-103. No vested right to compensation.
39-72-104. Repealed.

Part 2 — Administrative Provisions

39-72-201. Administration of chapter.
39-72-202. Powers of department.
39-72-203. Department to adopt rules.
39-72-204. Claim forms to be prescribed by department.
39-72-205. Repealed.
39-72-206. Legal action by department.

Part 3 — Coverage and Liability

39-72-301. Who subject to chapter.
39-72-302. Employer liability.
39-72-303. Which employer liable.
39-72-304. Repealed.
39-72-305. Right to compensation exclusive remedy — uninsured employers.
39-72-306 through 39-72-309. Repealed.
39-72-310. Occupational disease coverage under workers' compensation plans.

Part 4 — Presentment and Payment of Claims Generally

39-72-401. Payment of compensation subject to provisions of chapter.
39-72-402. Practice and procedure — applicability of Workers' Compensation Act.
39-72-403. Time when claims must be presented.
39-72-404. False representation by employee concerning previous occupational disease.
39-72-405. General limitations on payment of compensation.
39-72-406. Repealed.
39-72-407. Repealed.
39-72-408. Proximate causation.

Part 5 — Standards for Determining Whether Death or Disability Due to Pneumoconiosis

39-72-501 through 39-72-508. Repealed.
39-72-509. Benefits for pneumoconiosis.

Part 6 — Medical Examinations—Determining Compensability of Claims

39-72-601. Medical panel.
39-72-602. Insurer may accept liability — procedure for medical examination when insurer has not accepted liability.
39-72-603. Repealed.
39-72-604. Repealed.
39-72-605. When occupational disease causes death.
39-72-606. Autopsy.
39-72-607. Periodic medical examinations.
39-72-608. Payment of medical examination, report, and autopsy expenses.
39-72-609. Report of medical panel prima facie evidence.
39-72-610. Report of and examinations conducted by medical panel.
39-72-611. Hearing on determination — when.
39-72-612. Hearing and appeal to workers' compensation judge.
39-72-613. Costs and attorney fees.

Part 7 — Compensation and Benefits

39-72-701. Compensation for total disability or death due to occupational disease other than pneumoconiosis.
39-72-702. Repealed.
39-72-703. No compensation for partial disability.
39-72-704. Medical and hospital expenses.
39-72-705. Burial expenses.
39-72-706. Aggravation.
39-72-707. Silicosis with complications.
39-72-708. Prohibiting supplementing of benefits.
39-72-709. Diminution of compensation.
39-72-710. Repealed.
39-72-711. Lump-sum and compromise settlements.
39-72-712. Methods of deducting attorney's fee from compensation.
39-72-713. Repealed.
39-72-714. Reduction or suspension of compensation for unsanitary or injurious practices or refusal to submit to medical or surgical treatment.

Part 1
General Provisions

39-72-101. Short title. This chapter may be cited as the "Occupational Disease Act of Montana".

History: En. Sec. 1, Ch. 155, L. 1959; R.C.M. 1947, 92-1301; amd. Sec. 84, Ch. 397, L. 1979.

39-72-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" is as defined in 39-71-116.

(2) "Child" is as defined in 39-71-116.

(3) "Department" means the department of labor and industry.

(4) "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease from performing work in the worker's job pool. Silicosis, when complicated by active pulmonary tuberculosis, is presumed to be total disablement. "Disability", "total disability", and "totally disabled" are synonymous with "disablement", but they have no reference to "permanent partial disability".

(5) "Employee" is as defined in 39-71-118.

(6) "Employer" is as defined in 39-71-117.

(7) "Independent contractor" is as defined in 39-71-120.

(8) "Insurer" is as defined in 39-71-116.

(9) "Invalid" is as defined in 39-71-116.

(10) "Occupational disease" means harm, damage, or death as set forth in 39-71-119(1) arising out of or contracted in the course and scope of employment and caused by events occurring on more than a single day or work shift. The term does not include a physical or mental condition arising from emotional or mental stress or from a nonphysical stimulus or activity.

(11) "Order" is as defined in 39-71-116.

(12) "Pneumoconiosis" means a chronic dust disease of the lungs arising out of employment in coal mines and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of such employment.

(13) "Silicosis" means a chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide (SiO_2) and characterized by small discrete nodules of fibrous tissue similarly disseminated throughout both lungs, causing the characteristic x-ray pattern, and by other variable clinical manifestations.

(14) "Wages" is as defined in 39-71-123.

(15) "Year" is as defined in 39-71-116.

History: (1) thru (10), (12) thru (17)En. 92-1303.1 by Sec. 1, Ch. 208, L. 1977; Sec. 92-1303.1, R.C.M. 1947; (11)En. Sec. 4, Ch. 155, L. 1959; amd. Sec. 1, Ch. 95, L. 1965; amd. Sec. 1, Ch. 41, L. 1971; Sec. 92-1304, R.C.M. 1947; R.C.M. 1947, 92-1303.1, 92-1304; amd. Sec. 1, Ch. 104, L. 1979; amd. Sec. 85, Ch. 397, L. 1979; amd. Sec. 64, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 8, Ch. 480, L. 1991.

Cross-References

Eligibility for silicosis benefits — relationship to this chapter, 39-73-104.

39-72-103. No vested right to compensation. The right to the compensation provided for herein shall not nor shall the rate or amount thereof be or become vested or continuing rights in persons awarded compensation under this chapter or any amendment hereof, but the state reserves the right, by act of the legislature, to reduce the rate or amount of compensation thereafter to be received by any person theretofore or thereafter receiving compensation under this chapter or any amendment hereof or to wholly discontinue to all persons all compensation provided for by this chapter or any amendment hereof.

History: En. Sec. 67, Ch. 155, L. 1959; R.C.M. 1947, 92-1367.

39-72-104. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 68, Ch. 155, L. 1959; R.C.M. 1947, 92-1368.

Part 2
Administrative Provisions

39-72-201. Administration of chapter. This chapter is administered by the department.

History: En. Sec. 2, Ch. 155, L. 1959; amd. Sec. 188, Ch. 147, L. 1963; amd. Sec. 43, Ch. 182, L. 1975; R.C.M. 1947, 92-1302; amd. Sec. 37, Ch. 613, L. 1989.

Cross-References

"Division" defined, 39-71-116, 39-72-102.

39-72-202. Powers of department. The department is hereby vested with full power, authority, and jurisdiction to do and perform any and all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under this chapter.

History: En. Sec. 52, Ch. 155, L. 1959; amd. Sec. 24, Ch. 208, L. 1977; R.C.M. 1947, 92-1352; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

"Division" defined, 39-71-116, 39-72-102.

39-72-203. Department to adopt rules. Subject to the provisions of this chapter, the department shall adopt and publish rules governing procedure before it and shall prescribe forms of notice and manner of serving the same in all claims for compensation and may change the same from time to time at its discretion.

History: En. Sec. 45, Ch. 155, L. 1959; R.C.M. 1947, 92-1345; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

"Division" defined, 39-71-116, 39-72-102.

39-72-204. Claim forms to be prescribed by department. Claims for compensation under this chapter shall be filed on forms prescribed and provided for by the department and shall be filed in the same manner as claims for compensation under the Workers' Compensation Act unless otherwise provided in this chapter.

History: En. Sec. 46, Ch. 155, L. 1959; amd. Sec. 23, Ch. 208, L. 1977; R.C.M. 1947, 92-1346; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

"Division" defined, 39-71-116, 39-72-102.

39-72-205. Repealed. Sec. 19, Ch. 104, L. 1979.

History: En. Sec. 58, Ch. 155, L. 1959; amd. Sec. 173, Ch. 147, L. 1963; amd. Sec. 25, Ch. 208, L. 1977; R.C.M. 1947, 92-1358.

39-72-206. Legal action by department. Upon request of the department, the attorney general shall institute and prosecute actions for the enforcement of the provisions of this chapter or for any penalty provided for in this chapter. The attorney general shall prosecute or defend all actions brought by or against the department in its official capacity. The department may compromise any action brought under this chapter.

History: En. Sec. 43, Ch. 155, L. 1959; amd. Sec. 189, Ch. 147, L. 1963; amd. Sec. 22, Ch. 208, L. 1977; R.C.M. 1947, 92-1343; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Duties of Attorney General, 2-15-501.

"Division" defined, 39-71-116, 39-72-102.

Part 3
Coverage and Liability

39-72-301. Who subject to chapter. This chapter shall apply to and only to all employers and employees who now are or hereafter will be subject to the provisions of the Workers' Compensation Act of the state of Montana.

History: En. Sec. 7, Ch. 155, L. 1959; R.C.M. 1947, 92-1307(part).

39-72-302. Employer liability. There is imposed on every employer subject to this chapter a liability for the payment of compensation as herein provided.

History: En. Sec. 66, Ch. 155, L. 1959; R.C.M. 1947, 92-1366.

Cross-References

"Employer" defined, 39-71-117, 39-72-102.

39-72-303. Which employer liable. (1) Where compensation is payable for an occupational disease, the only employer liable is the employer in whose employment the employee was last injuriously exposed to the hazard of the disease.

(2) When there is more than one insurer and only one employer at the time the employee was injuriously exposed to the hazard of the disease, the liability rests with the insurer providing coverage at the earlier of:

(a) the time the occupational disease was first diagnosed by a treating physician or medical panel; or

(b) the time the employee knew or should have known that the condition was the result of an occupational disease.

(3) In the case of pneumoconiosis, any coal mine operator who has acquired a mine in the state or substantially all of the assets of a mine from a person who was an operator of the mine on or after December 30, 1969, is liable for and shall secure the payment of all benefits that would have been payable by that person with respect to miners previously employed in the mine if acquisition had not occurred and that person had continued to operate the mine, and the prior operator of the mine is not relieved of any liability under this section.

History: En. Sec. 10, Ch. 155, L. 1959; amd. Sec. 2, Ch. 190, L. 1971; R.C.M. 1947, 92-1310; amd. Sec. 1, Ch. 112, L. 1985; amd. Sec. 5, Ch. 619, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 619 inserted (2) relating to liability for injury when more than one insurer and only one employer involved; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

"Employer" defined, 39-71-117, 39-72-102.
"Employee" defined, 39-71-118, 39-72-102.
"Occupational disease" defined, 39-72-102.
"Pneumoconiosis" defined, 39-72-102.

39-72-304. Repealed. Sec. 13, Ch. 558, L. 1991.

History: En. Sec. 30, Ch. 155, L. 1959; amd. Sec. 16, Ch. 208, L. 1977; R.C.M. 1947, 92-1330(2) thru (7); amd. Sec. 64, Ch. 613, L. 1989.

39-72-305. Right to compensation exclusive remedy — uninsured employers. (1) The right to recover compensation pursuant to the provisions of this chapter for occupational diseases sustained by an employee and arising out of and in the course of employment, whether resulting in death or not, is the exclusive remedy therefor against an employer who is properly insured under the Workers' Compensation Act and the Occupational Disease Act of Montana.

(2) The provisions of the Workers' Compensation Act relating to uninsured employers and benefits due uninsured claimants apply to and are incorporated as part of this chapter.

History: En. Sec. 8, Ch. 155, L. 1959; R.C.M. 1947, 92-1308; amd. Sec. 2, Ch. 104, L. 1979.

Cross-References

"Employer" defined, 39-71-117, 39-72-102.
"Employee" defined, 39-71-118, 39-72-102.
"Occupational disease" defined, 39-72-102.

39-72-306 through 39-72-309. Repealed. Sec. 19, Ch. 104, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

39-72-306. En. Sec. 30, Ch. 155, L. 1959; amd. Sec. 16, Ch. 208, L. 1977; R.C.M. 1947, 92-1330(1).

39-72-307. En. Sec. 41, Ch. 155, L. 1959; R.C.M. 1947, 92-1341.

39-72-308. En. Sec. 31, Ch. 155, L. 1959; R.C.M. 1947, 92-1331.

39-72-309. En. Sec. 39, Ch. 155, L. 1959; amd. Sec. 20, Ch. 208, L. 1977; R.C.M. 1947, 92-1339.

39-72-310. Occupational disease coverage under workers' compensation plans. (1) Every employer enrolled under compensation plan No. 1, every insurer under compensation plan No. 2, and the state fund under compensation plan No. 3, all provided for under the Workers' Compensation Act, are considered to also provide full coverage for claims under this chapter. Any policy of insurance for workers' compensation coverage under the Workers' Compensation Act written by a private insurance carrier or the state fund is considered to provide full occupational disease coverage under the provisions of this chapter.

(2) Except as provided in this chapter, the department shall apply the appropriate provisions of Title 39, chapter 71, parts 21, 22, and 23, to the administration of The Occupational Disease Act of Montana in the same manner as they are applied to the administration of the Workers' Compensation Act.

(3) Under compensation plan No. 3, any premiums and other receipts held by the state fund for occupational disease insurance coverage must be transferred to the workers' compensation industrial insurance account, and payments for occupational disease claims by the state fund must be paid out of the industrial insurance account.

History: En. 92-1334.1 by Sec. 17, Ch. 208, L. 1977; R.C.M. 1947, 92-1334.1; amd. Sec. 38, Ch. 613, L. 1989.

Cross-References

"Division" defined, 39-71-116, 39-72-102.
"Insurer" defined, 39-71-116, 39-72-102.
"Employer" defined, 39-71-117, 39-72-102.
"Occupational disease" defined, 39-72-102.

Part 4

Presentment and Payment of Claims Generally

39-72-401. Payment of compensation subject to provisions of chapter. When he has complied with other provisions of this chapter, compensation shall be paid to a claimant who becomes disabled by reason of occupational disease arising out of his employment, subject to the conditions set forth in this chapter.

History: En. Sec. 11, Ch. 155, L. 1959; amd. Sec. 1, Ch. 92, L. 1965; amd. Sec. 2, Ch. 208, L. 1977; R.C.M. 1947, 92-1311(part).

Cross-References

"Occupational disease" defined, 39-72-102.

39-72-402. Practice and procedure — applicability of Workers' Compensation Act. (1) Except as otherwise provided in this chapter, the practice and procedure prescribed in the Workers' Compensation Act applies to all proceedings under this chapter.

(2) Sections 39-71-304, 39-71-403, 39-71-406, 39-71-409, 39-71-411 through 39-71-413, 39-71-742, and Title 39, chapter 71, part 9, which are contained in the Workers' Compensation Act, specifically apply to and are incorporated as part of this chapter.

History: En. Sec. 7, Ch. 155, L. 1959; R.C.M. 1947, 92-1307(part); amd. Sec. 3, Ch. 104, L. 1979; amd. Sec. 12, Ch. 558, L. 1991.

39-72-403. Time when claims must be presented. (1) When a claimant seeks benefits under this chapter, his claims for benefits must be presented in writing to the employer, the employer's insurer, or the department within 2 years from the date the claimant knew or should have known that his total disability condition resulted from an occupational disease. When a beneficiary seeks benefits under this chapter, his claims for death benefits must be presented in writing to the employer, the employer's insurer, or the department within 1 year from the date the beneficiaries knew or should have known that the decedent's death was related to an occupational disease.

(2) The department may, upon a reasonable showing by the claimant or a decedent's beneficiaries that the claimant or the beneficiaries could not have known that the claimant's condition or the employee's death was related to an occupational disease, waive the claim time requirement up to an additional 2 years.

History: En. 92-1312.1 by Sec. 3, Ch. 208, L. 1977; R.C.M. 1947, 92-1312.1; amd. Sec. 2, Ch. 112, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

"Beneficiary" defined, 39-71-116, 39-72-102.
"Division" defined, 39-71-116, 39-72-102.
"Insurer" defined, 39-71-116, 39-72-102.
"Year" defined, 39-71-116, 39-72-102.
"Employer" defined, 39-71-117, 39-72-102.
"Employee" defined, 39-71-118, 39-72-102.
"Occupational disease" defined, 39-72-102.

39-72-404. False representation by employee concerning previous occupational disease. No compensation shall be payable for an occupational disease if the employee, at the time of entering the employment of the employer by whom the compensation would otherwise be payable, knowingly represented himself in writing as not having previously been disabled, laid off, or compensated in damages or otherwise because of such disease when the contrary is true.

History: En. Sec. 42, Ch. 155, L. 1959; R.C.M. 1947, 92-1342.

Cross-References

"Employer" defined, 39-71-117, 39-72-102.
"Employee" defined, 39-71-118, 39-72-102.
"Occupational disease" defined, 39-72-102.

39-72-405. General limitations on payment of compensation. (1) Compensation may not be paid when the last day of the injurious exposure of the employee to the hazard of the occupational disease has occurred prior to July 1, 1959.

(2) When an employee in employment on or after January 1, 1959, because the employee has an occupational disease incurred in and caused by the employment that is not yet disabling, is discharged or transferred from the employment in which the employee is engaged or when the employee ceases employment and it is in fact, as determined by the medical panel, inadvisable for the employee on account of a nondisabling occupational disease to continue in employment and the employee suffers wage loss by reason of the discharge, transfer, or cessation, compensation may be paid, not exceeding $10,000, by an agreement between the insurer and the claimant. If the parties fail to reach an agreement, the mediation procedures in Title 39, chapter 71, part 24, must be followed.

History: En. Sec. 11, Ch. 155, L. 1959; amd. Sec. 1, Ch. 92, L. 1965; amd. Sec. 2, Ch. 208, L. 1977; R.C.M. 1947, 92-1311(1)(a) thru (d); amd. Sec. 4, Ch. 104, L. 1979; amd. Sec. 3, Ch. 112, L. 1985; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 16, Ch. 555, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 555 near end of first sentence of (2), after "cessation", substituted "compensation may be paid" for "the department may allow compensation on account thereof as it considers just" and after "$10,000" inserted "by an agreement between the insurer and the claimant" and inserted second sentence that read: "If the parties fail to reach an agreement, the mediation procedures in Title 39, chapter 71, part 24, must be followed"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

"Division" defined, 39-71-116, 39-72-102.
"Employer" defined, 39-71-117, 39-72-102.
"Employee" defined, 39-71-118, 39-72-102.
"Disablement" defined, 39-72-102.
"Occupational disease" defined, 39-72-102.
"Silicosis" defined, 39-72-102.

39-72-406. Repealed. Sec. 5, Ch. 112, L. 1985.

History: En. Sec. 11, Ch. 155, L. 1959; amd. Sec. 1, Ch. 92, L. 1965; amd. Sec. 2, Ch. 208, L. 1977; R.C.M. 1947, 92-1311(2); amd. Sec. 5, Ch. 104, L. 1979.

39-72-407. Repealed. Sec. 5, Ch. 112, L. 1985.

History: En. Sec. 11, Ch. 155, L. 1959; amd. Sec. 1, Ch. 92, L. 1965; amd. Sec. 2, Ch. 208, L. 1977; R.C.M. 1947, 92-1311(3).

39-72-408. Proximate causation. Occupational diseases shall be deemed to arise out of the employment only if:

(1) there is a direct causal connection between the conditions under which the work is performed and the occupational disease;

(2) the disease can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;

(3) the disease can be fairly traced to the employment as the proximate cause;

(4) the disease does not come from a hazard to which workmen would have been equally exposed outside of the employment;

(5) the disease is incidental to the character of the business and not independent of the relation of employer and employee.

History: En. Sec. 5, Ch. 155, L. 1959; amd. Sec. 1, Ch. 40, L. 1971; R.C.M. 1947, 92-1305.

Cross-References

"Employer" defined, 39-71-117, 39-72-102.

"Employee" defined, 39-71-118, 39-72-102.

"Occupational disease" defined, 39-72-102.

Part 5

Standards for Determining Whether Death or Disability Due to Pneumoconiosis

39-72-501 through 39-72-508. Repealed. Sec. 19, Ch. 104, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

39-72-501. En. 92-1315.2 by Sec. 7, Ch. 208, L. 1977; R.C.M. 1947, 92-1315.2.

39-72-502. En. Sec. 5, Ch. 190, L. 1971; R.C.M. 1947, 92-1315.1.

39-72-503 through 39-72-508. En. Sec. 15, Ch. 155, L. 1959; amd. Sec. 4, Ch. 190, L. 1971; amd. Sec. 6, Ch. 208, L. 1977; R.C.M. 1947, 92-1315(1) through (6).

39-72-509. Benefits for pneumoconiosis. Pneumoconiosis is an occupational disease that is compensable under this chapter. However, any benefits granted a claimant under this chapter for pneumoconiosis must be reduced, but not below zero, by an amount equal to the benefits granted the claimant under any program under federal law that pays benefits for a claimant suffering disability from pneumoconiosis.

History: En. Sec. 6, Ch. 104, L. 1979.

Cross-References

"Occupational disease" defined, 39-72-102.

"Pneumoconiosis" defined, 39-72-102.

Part 6

Medical Examinations — Determining Compensability of Claims

39-72-601. Medical panel. (1) The department shall develop a list of physicians to serve on the occupational disease medical panel. The list may include physicians nominated by the board of medical examiners. A physician on the panel must be certified by his specialty board or be eligible for certification in the specialty area appropriate to the claimant's condition in relation to this chapter.

(2) The department shall select a panel physician to examine a claimant, as required. The department shall appoint, as required, one member of the panel to be the chairman.

History: En. Sec. 14, Ch. 155, L. 1959; amd. Sec. 4, Ch. 208, L. 1977; R.C.M. 1947, 92-1314; amd. Sec. 7, Ch. 104, L. 1979; amd. Sec. 1, Ch. 162, L. 1989; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References
"Division" defined, 39-71-116, 39-72-102.

39-72-602. Insurer may accept liability — procedure for medical examination when insurer has not accepted liability. (1) An insurer may accept liability for a claim under this chapter based on information submitted to it by a claimant.

(2) In order to determine the compensability of claims under this chapter when an insurer has not accepted liability, the following procedure must be followed:

(a) The department shall direct the claimant to a member of the medical panel for an examination. The panel member shall conduct an examination to determine whether the claimant is totally disabled and is suffering from an occupational disease. The panel member shall submit a report of his findings to the department.

(b) Either the claimant or the insurer may, within 20 days after the receipt of the report by the first panel member, request that the claimant be examined by a second panel member. If a second examination is requested, the department shall direct the claimant to a second panel member who shall conduct an examination to determine whether he believes the claimant is totally disabled and is suffering from an occupational disease. The panel member shall submit a report of his findings to the department. When a second examination has been requested, the reports of the examinations shall be submitted to three members of the medical panel for review. A medical panel member or the panel may, in order to assist the panel member or the panel in reaching a conclusion, consult with the claimant's attending physician. The three panel members shall issue a report concerning the claimant's physical condition and whether the claimant is suffering from an occupational disease.

(c) If a second examination is not requested, the department shall issue its order determining whether the claimant is entitled to occupational disease benefits based on the report of the first examining physician. If a second examination is requested, the department shall issue its order based on the report of the three members of the medical panel.

(d) For the purpose of reviewing the reports of the examinations and issuing the report under subsection (2)(b), the three members of the medical panel shall be the two members of the panel who examined the claimant and the panel chairman. If the panel chairman has examined the claimant, the panel chairman shall appoint another member of the medical panel to be the third member.

History: En. 92-1314.1 by Sec. 5, Ch. 208, L. 1977; R.C.M. 1947, 92-1314.1(1); amd. Sec. 8, Ch. 104, L. 1979; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References
"Division" defined, 39-71-116, 39-72-102.
"Insurer" defined, 39-71-116, 39-72-102.
"Order" defined, 39-71-116, 39-72-102.
"Occupational disease" defined, 39-72-102.

39-72-603. Repealed. Sec. 19, Ch. 104, L. 1979.

History: En. 92-1314.1 by Sec. 5, Ch. 208, L. 1977; R.C.M. 1947, 92-1314.1(2).

39-72-604. Repealed. Sec. 19, Ch. 104, L. 1979.

History: En. Sec. 16, Ch. 155, L. 1959; amd. Sec. 8, Ch. 208, L. 1977; R.C.M. 1947, 92-1316.

39-72-605. When occupational disease causes death. When an occupational disease is claimed to have caused death and a claim for death benefits is filed therefor, the department shall select at least two physicians who in the department's judgment could properly determine the condition regarding the decedent's death in relation to a possible occupational disease, and the physicians shall examine all available evidence pertaining to the claim and shall make findings and report to the department. The report is prima facie evidence of fact as to the matters therein contained.

History: En. Sec. 17, Ch. 155, L. 1959; amd. Sec. 9, Ch. 208, L. 1977; R.C.M. 1947, 92-1317; amd. Sec. 9, Ch. 104, L. 1979; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

"Division" defined, 39-71-116, 39-72-102.

"Occupational disease" defined, 39-72-102.

39-72-606. Autopsy. Upon the filing of a claim for compensation for death caused by an occupational disease if an autopsy is necessary to determine the cause of death, an autopsy shall be ordered by the department. The autopsy shall be made under the supervision of the county coroner or a medical examiner. The department may designate a duly licensed physician who is a specialist in such examinations to perform or attend the autopsies and to certify his findings thereon. The findings shall be examined by the physicians submitting a report under 39-72-605 before the final report under that section is submitted to the department.

History: En. Sec. 18, Ch. 155, L. 1959; amd. Sec. 10, Ch. 208, L. 1977; R.C.M. 1947, 92-1318; amd. Sec. 27, Ch. 7, L. 1979; amd. Sec. 10, Ch. 104, L. 1979; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

"Division" defined, 39-71-116, 39-72-102.

"Occupational disease" defined, 39-72-102.

39-72-607. Periodic medical examinations. (1) Upon the request of the department or the insurer, each employee entitled to compensation shall submit to a medical examination from time to time by a physician designated by the department who is a member of the appropriate medical panel. The examination shall be at a place reasonably convenient for the employee.

(2) The order directing the examination shall fix a time and place having regard to the convenience of the employee, his physical condition, and his ability to attend. The employee and any other party in interest may have a physician present at the examination if the physician is provided and paid for by the employee or other party.

(3) If the employee refuses to submit to the examination or obstructs the examination, his right to compensation is suspended until the examination has been made, and no compensation is payable during or for the period of suspension.

(4) A physician who makes or is present at the examination may be required to testify as to the result thereof.

History: En. Sec. 19, Ch. 155, L. 1959; amd. Sec. 11, Ch. 208, L. 1977; R.C.M. 1947, 92-1319(1) thru (4); amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

"Division" defined, 39-71-116, 39-72-102.

"Insurer" defined, 39-71-116, 39-72-102.

"Order" defined, 39-71-116, 39-72-102.

"Employee" defined, 39-71-118, 39-72-102.

39-72-608. Payment of medical examination, report, and autopsy expenses. The expense of the first medical examination and report as provided in 39-72-602 must be borne by the insurer. The expense of a reexamination and panel report must be borne by the dissatisfied party requesting the reexamination. The expense of the periodic medical examinations and reports, as provided in 39-72-607, must be borne by the party requesting the periodic medical examination. The expense of the autopsy, as provided for in 39-72-606, must be borne by the party requesting the autopsy. When the occupational disease causes death, the expense of any examinations and reports, as provided in 39-72-605, must be borne by the party requesting the examination.

History: En. Sec. 20, Ch. 155, L. 1959; amd. Sec. 12, Ch. 208, L. 1977; R.C.M. 1947, 92-1320; amd. Sec. 11, Ch. 104, L. 1979; amd. Sec. 2, Ch. 162, L. 1989; amd. Sec. 17, Ch. 555, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 555 inserted last sentence that read: "When the occupational disease causes death, the expense of any examinations and reports, as provided in 39-72-605, must be borne by the party requesting the examination." Amendment effective July 1, 1993.

Cross-References

"Insurer" defined, 39-71-116, 39-72-102.

39-72-609. Report of medical panel prima facie evidence. A report submitted to the department by the appropriate medical panel and placed in the department's records is prima facie evidence as to the matters contained in the report.

History: En. 92-1314.1 by Sec. 5, Ch. 208, L. 1977; R.C.M. 1947, 92-1314.1(3); amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

"Division" defined, 39-71-116, 39-72-102.

39-72-610. Report of and examinations conducted by medical panel. (1) At a hearing held before the department or the workers' compensation judge, there is a rebuttable presumption that the report of the medical panel and any medical examination reports by members of the medical panel are correct.

(2) The claimant or the insurer may present additional medical information in order to rebut the medical examination report of a panel member or a panel report.

History: En. 92-1314.1 by Sec. 5, Ch. 208, L. 1977; R.C.M. 1947, 92-1314.1(5); amd. Sec. 12, Ch. 104, L. 1979; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

"Division" defined, 39-71-116, 39-72-102.

"Insurer" defined, 39-71-116, 39-72-102.

39-72-611. Hearing on determination — when. Upon the department's own motion or if a claimant or an insurer requests that a hearing be held by the department prior to the time the department issues its final determination concerning the claimant's entitlement to occupational disease benefits, the department shall hold a hearing.

History: En. 92-1314.1 by Sec. 5, Ch. 208, L. 1977; R.C.M. 1947, 92-1314.1(4); amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

"Division" defined, 39-71-116, 39-72-102.

"Insurer" defined, 39-71-116, 39-72-102.

"Occupational disease" defined, 39-72-102.

39-72-612. Hearing and appeal to workers' compensation judge. (1) Within 20 days after the department has issued its order of determination as to whether the claimant is entitled to benefits under this chapter, a party may request a hearing. In order to perfect an appeal to the workers' compensation judge, the appealing party shall request a hearing before the department. The department shall grant a hearing, and the department's final determination may not be issued until after the hearing.

(2) Appeals from a final determination of the department must be made to the workers' compensation judge within 30 days after the department has issued its final determination. The judge, after a hearing held pursuant to 39-71-2903 and 39-71-2904, shall make a final determination concerning the claimant's claim. The judge may overrule the department only on the basis that the department's determination is:

(a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority of the agency;

(c) made upon unlawful procedure;

(d) affected by other error of law;

(e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

History: (1)En. 92-1314.1 by Sec. 5, Ch. 208, L. 1977; Sec. 92-1314.1, R.C.M. 1947; (2)En. Sec. 35, Ch. 155, L. 1959; amd. Sec. 172, Ch. 147, L. 1963; amd. Sec. 18, Ch. 208, L. 1977; Sec. 92-1335, R.C.M. 1947; R.C.M. 1947, 92-1314.1(6), 92-1335; amd. Sec. 13, Ch. 104, L. 1979; amd. Sec. 3, Ch. 162, L. 1989; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

"Division" defined, 39-71-116, 39-72-102.

"Order" defined, 39-71-116, 39-72-102.

39-72-613. Costs and attorney fees. (1) If an insurer requests that a hearing be held before the department and the claim is determined compensable by the department after the hearing and the insurer does not appeal the department's decision to the workers' compensation judge, reasonable costs and attorney fees, as determined by the department, shall be paid to the claimant's attorney by the insurer.

(2) If an insurer appeals a decision of the department to the workers' compensation judge or from the judge to the supreme court and the claim is determined compensable, reasonable costs and attorney fees, as determined by the workers' compensation judge, shall be paid to the claimant's attorney by the insurer for proceedings before the department, the workers' compensation judge, and the supreme court.

History: En. Sec. 14, Ch. 104, L. 1979; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

"Division" defined, 39-71-116, 39-72-102.

"Insurer" defined, 39-71-116, 39-72-102.

Part 7

Compensation and Benefits

Part Cross-References

Occupational disease benefits exempt from medical services lien, 71-3-1118.

39-72-701. Compensation for total disability or death due to occupational disease other than pneumoconiosis. (1) The compensation to which an employee temporarily totally disabled or permanently totally disabled by an occupational disease other than pneumoconiosis, or the beneficiaries and dependents of the employee in the case of death caused by an occupational disease other than pneumoconiosis, are entitled under this chapter shall be the same payments which are payable to an injured employee, and such payments shall be made for the same period of time as is provided in cases of temporary total disability, permanent total disability, and in cases of injuries causing death under the Workers' Compensation Act.

(2) In cases where it is determined that periodic disability benefits granted by the Social Security Act are payable because of the disease, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal as nearly as practical to one-half the federal periodic benefits for such week, which amount is to be calculated from the date of the disability social security entitlement.

History: **En. Sec. 21, Ch. 155, L. 1959; amd. Sec. 6, Ch. 190, L. 1971; amd. Sec. 47, Ch. 535, L. 1975; R.C.M. 1947, 92-1321(part); amd. Sec. 88, Ch. 397, L. 1979; amd. Sec. 8, Ch. 21, L. 1981.**

Cross-References

"Employee" defined, 39-71-118, 39-72-102.
"Occupational disease" defined, 39-72-102.
"Pneumoconiosis" defined, 39-72-102.

39-72-702. Repealed. Sec. 19, Ch. 104, L. 1979.

History: **En. Sec. 21, Ch. 155, L. 1959; amd. Sec. 6, Ch. 190, L. 1971; amd. Sec. 47, Ch. 535, L. 1975; R.C.M. 1947, 92-1321(part); amd. Sec. 89, Ch. 397, L. 1979.**

39-72-703. No compensation for partial disability. No compensation as provided in 39-72-701 is payable to an employee who is partially disabled from an occupational disease.

History: **En. Sec. 22, Ch. 155, L. 1959; R.C.M. 1947, 92-1322; amd. Sec. 15, Ch. 104, L. 1979.**

Cross-References

"Employee" defined, 39-71-118, 39-72-102.
"Occupational disease" defined, 39-72-102.

39-72-704. Medical and hospital expenses. In addition to the compensation provided by this chapter, an employee who becomes either totally or partially disabled from an occupational disease is entitled to receive for treatment of the occupational disease, without limitation as to length of time or dollar amount, reasonable medical services, hospitalization, medicines, and other treatment approved by the department.

History: **En. Sec. 25, Ch. 155, L. 1959; amd. Sec. 15, Ch. 208, L. 1977; R.C.M. 1947, 92-1325; amd. Sec. 16, Ch. 104, L. 1979; amd. Sec. 64, Ch. 613, L. 1989.**

Cross-References

"Division" defined, 39-71-116, 39-72-102.
"Employee" defined, 39-71-118, 39-72-102.
"Occupational disease" defined, 39-72-102.

39-72-705. Burial expenses. In addition to and separate and apart from any other compensation or benefit provided for in this chapter, there shall be paid in case of death of an employee, which death is the result of an occupational disease contracted in the course of employment, the reasonable burial expenses of the employee, not exceeding the maximum amount provided for in 39-71-725.

History: **En. Sec. 24, Ch. 155, L. 1959; amd. Sec. 14, Ch. 208, L. 1977; R.C.M. 1947, 92-1324.**

Cross-References
"Employee" defined, 39-71-118, 39-72-102.
"Occupational disease" defined, 39-72-102.

39-72-706. Aggravation. (1) If an occupational disease is aggravated by any other disease or infirmity not itself compensable or if disability or death from any other cause not itself compensable is aggravated, prolonged, accelerated, or in any way contributed to by an occupational disease, the compensation payable under this chapter must be reduced and limited to such proportion only of the compensation that would be payable if the occupational disease were the sole cause of the disability or death as such occupational disease as a causative factor bears to all the causes of such disability or death.

(2) If compensation is reduced a proportionate amount as in subsection (1) and the worker receives disability social security benefits, the offset entitlement granted to the insurer must be reduced in the same proportionate amount as the compensation as long as the worker continues to receive disability social security benefits.

History: En. Sec. 26, Ch. 155, L. 1959; R.C.M. 1947, 92-1326; amd. Sec. 9, Ch. 21, L. 1981; amd. Sec. 4, Ch. 162, L. 1989.

Cross-References
"Insurer" defined, 39-71-116, 39-72-102.

39-72-707. Silicosis with complications. In cases of disability or death from silicosis complicated with tuberculosis of the lungs, compensation shall be payable as for disability or death from an uncomplicated silicosis. In case of disability or death from silicosis when complicated with any disease not compensable under this chapter and other than pulmonary tuberculosis, compensation shall be reduced as provided in 39-72-706.

History: En. Sec. 27, Ch. 155, L. 1959; R.C.M. 1947, 92-1327.

Cross-References
"Silicosis" defined, 39-72-102.

39-72-708. Prohibiting supplementing of benefits. No person receiving compensation or benefits under chapter 73 of this title is entitled to compensation or benefits under this chapter.

History: En. Sec. 32, Ch. 155, L. 1959; R.C.M. 1947, 92-1332(part); amd. Sec. 90, Ch. 397, L. 1979.

39-72-709. Diminution of compensation. Compensation payable pursuant to the terms of this chapter to the claimant, his beneficiaries, or dependents shall be diminished by the amount of any compensation paid or to be paid him or them under the Workers' Compensation Act of Montana or any other workers' compensation act.

History: En. Sec. 33, Ch. 155, L. 1959; R.C.M. 1947, 92-1333.

39-72-710. Repealed. Sec. 19, Ch.104, L. 1979.

History: En. Sec. 37, Ch. 155, L. 1959; amd. Sec. 19, Ch. 208, L. 1977; R.C.M. 1947, 92-1337.

39-72-711. Lump-sum and compromise settlements. (1) No final and binding award made upon any claim pursuant to this chapter may be converted into a lump-sum payment, in whole or in part, except as provided in this section or 39-72-712.

(2) Whenever there are contested issues as to an insurer's liability for a claim under this chapter, including a claim based on 39-72-405(2), a claimant

and an insurer may enter into a full and final compromise settlement of the claim. However, no such settlements are binding on the parties until approved by the department. After the department approves a full and final compromise settlement, the claim is closed and the insurer's liability for a settled claim is forever released.

History: En. Sec. 23, Ch. 155, L. 1959; amd. Sec. 13, Ch. 208, L. 1977; R.C.M. 1947, 92-1323(part); amd. Sec. 17, Ch. 104, L. 1979; amd. Sec. 4, Ch. 112, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

"Division" defined, 39-71-116, 39-72-102.

"Insurer" defined, 39-71-116, 39-72-102.

39-72-712. Methods of deducting attorney's fee from compensation. If a claimant has entered into a contract of employment with an attorney for the recovery of benefits under this chapter and the terms of the employment contract are reasonable, the amount of the attorney's fee may be ordered by the department to be paid by the insurer and thereafter deducted proportionately from weekly payments thereafter to be made to the claimant under this chapter. The department may require payments to be deducted each week in an amount it considers advisable from the payments thereafter to be made to the claimant under this chapter and paid to the attorney as they are so deducted from the weekly payments to the claimant.

History: En. Sec. 23, Ch. 155, L. 1959; amd. Sec. 13, Ch. 208, L. 1977; R.C.M. 1947, 92-1323(part); amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

"Division" defined, 39-71-116, 39-72-102.

"Insurer" defined, 39-71-116, 39-72-102.

39-72-713. Repealed. Sec. 19, Ch. 104, L. 1979.

History: En. Sec. 29, Ch. 155, L. 1959; R.C.M. 1947, 92-1329.

39-72-714. Reduction or suspension of compensation for unsanitary or injurious practices or refusal to submit to medical or surgical treatment. The department may reduce or suspend the compensation of an employee who persists in unsanitary or injurious practices tending to imperil or retard his recovery or who refuses to submit to such medical or surgical treatment as is reasonably essential to promote his recovery.

History: En. Sec. 19, Ch. 155, L. 1959; amd. Sec. 11, Ch. 208, L. 1977; R.C.M. 1947, 92-1319(5); amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

"Division" defined, 39-71-116, 39-72-102.

"Employee" defined, 39-71-118, 39-72-102.

CHAPTER 73

SILICOSIS BENEFITS

Part 1 — General Provisions

39-73-101. Definitions.
39-73-102. Administration — duties of department.
39-73-103. Conformity with acts of federal government.
39-73-104. Eligibility requirements for benefits.
39-73-105. Application for payment.
39-73-106. Investigation of applications.
39-73-107. Amount of payments.
39-73-108. Payment of benefits where person entitled is in institution.

39-73-109. Payment of benefits to surviving spouse.
39-73-110. Assistance not assignable or subject to legal process.
39-73-111. Representative payee — appointment — duties.

Part 1
General Provisions

39-73-101. Definitions. (1) "Examining board" shall mean well-qualified physician or physicians, as designated by the department of labor and industry.

(2) The term "gainful occupation", as used herein, shall not be construed to mean occasional or intermittent light employment where the ability to do manual labor is not essential but shall mean any person having an income from any other source exceeding $150 per month.

(3) "Payments" means money payments to persons having silicosis as herein defined.

(4) "Silicosis" means a fibrotic condition of the lungs due to the inhalation of silica dust.

History: (1) thru (3)En. Sec. 1, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 225, L. 1961; amd. Sec. 1, Ch. 360, L. 1971; amd. Sec. 38, Ch. 182, L. 1975; Sec. 71-1001, R.C.M. 1947; (4)En. Sec. 3, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 68, L. 1945; amd. Sec. 1, Ch. 216, L. 1947; amd. Sec. 1, Ch. 192, L. 1949; amd. Sec. 1, Ch. 42, L. 1953; amd. Sec. 1, Ch. 252, L. 1955; amd. Sec. 1, Ch. 3, L. 1961; amd. Sec. 3, Ch. 225, L. 1961; amd. Sec. 1, Ch. 267, L. 1965; amd. Sec. 1, Ch. 125, L. 1967; amd. Sec. 1, Ch. 260, L. 1969; amd. Sec. 1, Ch. 105, L. 1971; amd. Sec. 2, Ch. 360, L. 1971; amd. Sec. 1, Ch. 504, L. 1973; Sec. 71-1003, R.C.M. 1947; R.C.M. 1947, 71-1001, 71-1003(part); amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

"Silicosis" defined for Occupational Disease Act, 39-72-102.

39-73-102. Administration — duties of department. The department of labor and industry shall administer this chapter. The department shall:

(1) formulate a plan and adopt rules for the operation of this chapter;

(2) cooperate with the federal government in all matters of immediate concern pertaining to silicosis;

(3) designate the procedure to be followed in securing a competent medical examination for the purposes of determining silicosis in each individual applicant;

(4) designate suitable physicians or physician, well qualified to examine applicants for aid under this chapter;

(5) pay the actual transportation expenses of any applicant from the place of his residence in the state to the place of examination and return, from funds appropriated to the department for that purpose;

(6) develop and cooperate with other agencies in developing measures for the prevention of silicosis.

History: En. Sec. 2, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 2, Ch. 225, L. 1961; amd. Sec. 39, Ch. 182, L. 1975; R.C.M. 1947, 71-1002; amd. Sec. 2, Ch. 370, L. 1989; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References
Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 3.
"Silicosis" defined, 39-73-101.

39-73-103. Conformity with acts of federal government. If and when the government of the United States makes grants to states in aid of and allowing payments to persons having silicosis, as herein defined, the department of labor and industry is hereby authorized to administer in the state of Montana such grants-in-aid and payments in addition to grants made by this chapter. The total payments to any individual under this chapter shall not exceed $200 per month, exclusive of any grants made by congress.

History: En. Sec. 8, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 3, Ch. 216, L. 1947; amd. Sec. 3, Ch. 192, L. 1949; amd. Sec. 2, Ch. 204, L. 1953; amd. Sec. 3, Ch. 252, L. 1955; amd. Sec. 2, Ch. 3, L. 1961; amd. Sec. 8, Ch. 225, L. 1961; amd. Sec. 3, Ch. 267, L. 1965; amd. Sec. 3, Ch. 125, L. 1967; amd. Sec. 3, Ch. 260, L. 1969; amd. Sec. 3, Ch. 105, L. 1971; amd. Sec. 3, Ch. 504, L. 1973; R.C.M. 1947, 71-1008; amd. Sec. 1, Ch. 559, L. 1981; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References
"Silicosis" defined, 39-73-101.

39-73-104. Eligibility requirements for benefits. Payment shall be made under this chapter to any person who:

(1) has silicosis, as defined in 39-73-101, which results in his total disability so as to render it impossible for him to follow continuously any substantially gainful occupation;

(2) has resided in and been an inhabitant of the state of Montana for 10 years or more immediately preceding the date of the application;

(3) is not receiving, with respect to any month for which he would receive a payment under this chapter, compensation under The Occupational Disease Act of Montana, as provided by chapter 72 of this title, which will equal the sum of $200.

History: En. Sec. 3, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 68, L. 1945; amd. Sec. 1, Ch. 216, L. 1947; amd. Sec. 1, Ch. 192, L. 1949; amd. Sec. 1, Ch. 42, L. 1953; amd. Sec. 1, Ch. 252, L. 1955; amd. Sec. 1, Ch. 3, L. 1961; amd. Sec. 3, Ch. 225, L. 1961; amd. Sec. 1, Ch. 267, L. 1965; amd. Sec. 1, Ch. 125, L. 1967; amd. Sec. 1, Ch. 260, L. 1969; amd. Sec. 1, Ch. 105, L. 1971; amd. Sec. 2, Ch. 360, L. 1971; amd. Sec. 1, Ch. 504, L. 1973; R.C.M. 1947, 71-1003(part); amd. Sec. 2, Ch. 559, L. 1981.

Cross-References
"Gainful occupation" defined, 39-73-101.

39-73-105. Application for payment. Application for payment under this chapter shall be made by the person seeking such payment to the department of labor and industry. The application shall be in writing or reduced to writing in the manner and upon the form prescribed by the department. The application form may be filled in and written by a person authorized by the department. If the applicant is unable to sign his or her name on the application, a duly witnessed mark may be used.

History: En. Sec. 5, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 5, Ch. 225, L. 1961; amd. Sec. 40, Ch. 182, L. 1975; R.C.M. 1947, 71-1005; amd. Sec. 64, Ch. 613, L. 1989.

39-73-106. Investigation of applications. (1) Whenever the department of labor and industry under this chapter receives an application for a payment, an investigation and record shall be promptly made of the validity of the claim. The object of such investigation shall be to ascertain whether or not the applicant is entitled to a payment under the provisions of this chapter and such other information as may be required by the rules of the department. The investigation of such applicant shall be conducted by representatives of the department. The physicians or physician designated by the department, as herein provided, shall constitute an examining board for such clinical, pathological, x-ray, and roentgen examinations as in the opinion of the examining board may be necessary to determine whether or not the applicant has silicosis, as herein defined. A certified report of such examination from the examining board of physicians or physician must be attached to the investigation report.

(2) Upon the completion of such investigation, the department shall determine whether or not the applicant is entitled to a payment under this chapter. The department shall then notify the applicant of its decision.

History: (1)En. Sec. 6, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 6, Ch. 225, L. 1961; amd. Sec. 41, Ch. 182, L. 1975; Sec. 71-1006, R.C.M. 1947; (2)En. Sec. 7, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 7, Ch. 225, L. 1961; amd. Sec. 42, Ch. 182, L. 1975; Sec. 71-1007, R.C.M. 1947; R.C.M. 1947, 71-1006, 71-1007; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

"Examining board" defined, 39-73-101.

"Silicosis" defined, 39-73-101.

39-73-107. Amount of payments. Subject to the provisions of this chapter and the deductions herein provided, any person who has silicosis, as defined in this chapter, and who has, subject to the regulations and standards of the department of labor and industry, been determined by the department to be entitled payment under this chapter for silicosis shall be granted a payment by the department of $200 per month, subject to such appropriations as may from time to time be made. If he is receiving payments under The Occupational Disease Act of Montana, as provided by chapter 72 of this title, which are less in the aggregate than $200, then he is entitled to a payment under this chapter of the difference between the amount received under The Occupational Disease Act of Montana, as provided by chapter 72 of this title, and $200 per month. The legislature shall authorize such additional appropriations as may be necessary to make the increased monthly payments provided herein.

History: Ap. p. Sec. 3, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 68, L. 1945; amd. Sec. 1, Ch. 216, L. 1947; amd. Sec. 1, Ch. 192, L. 1949; amd. Sec. 1, Ch. 42, L. 1953; amd. Sec. 1, Ch. 252, L. 1955; amd. Sec. 1, Ch. 3, L. 1961; amd. Sec. 3, Ch. 225, L. 1961; amd. Sec. 1, Ch. 267, L. 1965; amd. Sec. 1, Ch. 125, L. 1967; amd. Sec. 1, Ch. 260, L. 1969; amd. Sec. 1, Ch. 105, L. 1971; amd. Sec. 2, Ch. 360, L. 1971; amd. Sec. 1, Ch. 504, L. 1973; Sec. 71-1003, R.C.M. 1947; Ap. p. Sec. 4, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 2, Ch. 216, L. 1947; amd. Sec. 2, Ch. 192, L. 1949; amd. Sec. 1, Ch. 204, L. 1953; amd. Sec. 2, Ch. 252, L. 1955; amd. Sec. 1, Ch. 248, L. 1959; amd. Sec. 4, Ch. 225, L. 1961; amd. Sec. 2, Ch. 267, L. 1965; amd. Sec. 2, Ch. 125, L. 1967; amd. Sec. 2, Ch. 260, L. 1969; amd. Sec. 2, Ch. 105, L. 1971; amd. Sec. 2, Ch. 504, L. 1973; Sec. 71-1004, R.C.M. 1947; R.C.M. 1947, 71-1003(part), 71-1004; amd. Sec. 3, Ch. 559, L. 1981; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

"Silicosis" defined, 39-73-101.

39-73-108. Payment of benefits where person entitled is in institution. If any person who is entitled to benefits under this chapter shall be an inmate in any Montana state institution, benefits shall not be paid to him but shall be paid his beneficiary, if any, as defined in 39-71-116.

History: En. Sec. 3, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 68, L. 1945; amd. Sec. 1, Ch. 216, L. 1947; amd. Sec. 1, Ch. 192, L. 1949; amd. Sec. 1, Ch. 42, L. 1953; amd. Sec. 1, Ch. 252, L. 1955; amd. Sec. 1, Ch. 3, L. 1961; amd. Sec. 3, Ch. 225, L. 1961; amd. Sec. 1, Ch. 267, L. 1965; amd. Sec. 1, Ch. 125, L. 1967; amd. Sec. 1, Ch. 260, L. 1969; amd. Sec. 1, Ch. 105, L. 1971; amd. Sec. 2, Ch. 360, L. 1971; amd. Sec. 1, Ch. 504, L. 1973; R.C.M. 1947, 71-1003(c); amd. Sec. 9, Ch. 480, L. 1991.

39-73-109. Payment of benefits to surviving spouse. (1) Upon the death of a person receiving payments for silicosis under 39-73-104 or 39-73-108, the surviving spouse, as long as such spouse remains unmarried, is entitled to receive the payments granted the deceased spouse.

(2) A person who otherwise is qualified to receive payments under subsection (1) of this section but whose spouse died prior to March 14, 1974, is hereby made eligible to begin receiving one-half of those payments; provided, however, a person is not eligible for these payments if such spouse's taxable income is $6,800 or more per year.

History: (1)En. 71-1010 by Sec. 1, Ch. 203, L. 1974; Sec. 71-1010, R.C.M. 1947; (2)En. 71-1010.1 by Sec. 1, Ch. 500, L. 1975; Sec. 71-1010.1, R.C.M. 1947; R.C.M. 1947, 71-1010, 71-1010.1; amd. Sec. 91, Ch. 397, L. 1979.

Cross-References

"Silicosis" defined, 39-73-101.

39-73-110. Assistance not assignable or subject to legal process. Except as otherwise provided in this chapter, assistance granted under this chapter is not transferable or assignable, at law or in equity, and none of the money paid or payable under this chapter is subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

History: En. Sec. 18, Part 1, Ch. 82, L. 1937; amd. Sec. 26, Ch. 121, L. 1974; R.C.M. 1947, 71-229.

39-73-111. Representative payee — appointment — duties. (1) The department of labor and industry may appoint a representative payee to apply for and receive payment of silicosis benefits on behalf of a person eligible for such payments or his beneficiary if the department determines that such appointment is in the best interests of the person or his beneficiary. The representative payee may be a person, a corporation, a government agency, or an institution, including a nursing home or extended care facility providing care for the person or his beneficiary.

(2) To determine the best interests of the eligible person or his beneficiary for appointment of a representative payee, the department may consider:

(a) a court determination of incompetence;

(b) medical evidence;

(c) relevant information from any person, corporation, government agency, or institution; and

(d) other relevant information.

(3) The department shall:

(a) determine the circumstances in which a representative payee may be appointed;

(b) establish procedures for his appointment; and

(c) establish the representative payee's responsibilities.

(4) The representative payee shall:

(a) act as a trustee to the person eligible for silicosis payments or his beneficiary in handling payments received; and

(b) maintain and expend such funds for the benefit and best interests of the eligible person or his beneficiary.

(5) The department's obligation under this chapter is fully discharged upon payment of benefits to the representative payee.

History: En. Sec. 1, Ch. 69, L. 1989; amd. Sec. 64, Ch. 613, L. 1989.

TITLE 40

FAMILY LAW

Ch.
1. Marriage.
2. Husband and Wife.
3. Reconciliation.
4. Termination of Marriage, Child Custody, Support.
5. Enforcement of Support.
6. Parent and Child.
7. Uniform Child Custody Jurisdiction Act.
8. Adoption.
9. Grandparent Visitation.

CHAPTER 1

MARRIAGE

Part 1 — General Provisions

40-1-101. Purposes.
40-1-102. Uniformity of application and construction.
40-1-103. Formalities.
40-1-104. Application.
40-1-105. Application of the Montana Rules of Civil Procedure.
40-1-106. Parts of code not applicable.
40-1-107. Form of application, license, marriage certificate, and consent.

Part 2 — License Provisions

40-1-201. License application.
40-1-202. License issuance.
40-1-203. Proof of age and medical certificate required.
40-1-204. Contents and form of medical certificate.
40-1-205. Certificates from other states or for military personnel — when acceptable.
40-1-206. Premarital test — approved laboratories — rules.
40-1-207. Examination by health officer.
40-1-208. Penalties.
40-1-209. Expenses.
40-1-210. No license to be issued when applicants under influence of liquor or drug.
40-1-211. Repealed.
40-1-212. Effective period of license.
40-1-213. Judicial approval.

Part 3 — Solemnization

40-1-301. Solemnization and registration.
40-1-302 through 40-1-310 reserved.
40-1-311. Declaration of marriage without solemnization.
40-1-312. Persons who may draft declaration of marriage.
40-1-313. Penalty.
40-1-314 through 40-1-320 reserved.
40-1-321. Registration of marriage.
40-1-322. Certificate and copy presumptive evidence.
40-1-323. Proof of solemnized marriage when no record.
40-1-324. Declaration to be acknowledged and recorded.

Part 4 — Validity of Marriages—Declaration of Invalidity

40-1-401. Prohibited marriages.
40-1-402. Declaration of invalidity.
40-1-403. Validity of common-law marriage.
40-1-404. Putative spouse.

Chapter Cross-References

Montana Rules of Civil Procedure relating to marriage, children, and family, Rules 4D(2)(b), 4D(2)(c), 4D(5)(a)(iii), 20(a), 27(a)(2), M.R.Civ.P. (see Title 25, ch. 20).

Evidence rules relating to marriage, children, and family, 26-1-601, 26-1-602, 26-1-802.

No action for breach of promise, 27-1-602.

Contracts in restraint of marriage void, 28-2-706.

Agreement to marry to be in writing, 28-2-903.

Minors, Title 41.

Bigamy — incest, 45-5-507, 45-5-611.

Marriage under false personation — false swearing, 45-7-202.

Human Rights, Title 49.

Conditions restraining marriage void, 70-1-404.

Part 1
General Provisions

40-1-101. Purposes. This chapter shall be liberally construed and applied to promote its underlying purposes, which are to:

(1) provide adequate procedures for the solemnization and registration of marriage;

(2) strengthen and preserve the integrity of marriage and safeguard family relationships.

History: En. 48-302 by Sec. 2, Ch. 536, L. 1975; R.C.M. 1947, 48-302(part).

40-1-102. Uniformity of application and construction. This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states which enact it.

History: En. 48-303 by Sec. 3, Ch. 536, L. 1975; R.C.M. 1947, 48-303.

40-1-103. Formalities. Marriage is a personal relationship between a man and a woman arising out of a civil contract to which the consent of the parties is essential. A marriage licensed, solemnized, and registered as provided in this chapter is valid in this state. A marriage may be contracted, maintained, invalidated, or dissolved only as provided by the law of this state.

History: En. 48-304 by Sec. 4, Ch. 536, L. 1975; R.C.M. 1947, 48-304.

Cross-References

Obligations which cannot be specifically enforced — marriage promise, 27-1-412.

Cause of action for breach of promise abolished, 27-1-602.

Consent in general, Title 28, ch. 2, part 3.

Contracts, Title 28, ch. 2 and 3.

Contracts in restraint of marriage generally void, 28-2-706.

What contracts must be in writing — marriage, 28-2-903.

40-1-104. Application. All marriages contracted within this state prior to January 1, 1976, or outside the state, that were valid at the time of the contract or subsequently validated by the laws of the place in which they were contracted or by the domicile of the parties are valid in this state.

History: En. 48-313 by Sec. 13, Ch. 536, L. 1975; R.C.M. 1947, 48-313.

40-1-105. Application of the Montana Rules of Civil Procedure. (1) Except for proceedings coming under the Uniform Child Custody Jurisdiction Act, the Montana Rules of Civil Procedure apply to all proceedings under this chapter, except as otherwise provided in this chapter.

(2) A proceeding for declaration of invalidity of marriage shall be entitled, "In re the Marriage of .... and ....". A custody or support proceeding shall be entitled, "In re the (custody) (support) of ....".

(3) The initial pleading in all proceedings under this chapter shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings, and all pleadings in other matters under this chapter, shall be denominated as provided in the Montana Rules of Civil Procedure.

(4) In this chapter, "decree" includes "judgment".

History: En. 48-315 by Sec. 15, Ch. 536, L. 1975; amd. Sec. 26, Ch. 537, L. 1977; R.C.M. 1947, 48-315(part).

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

Application of the Montana Rules of Civil Procedure to termination of marriage, child custody, and support, 40-4-103.

Procedure — commencement — pleadings — abolition of existing defenses in termination of marriage, 40-4-105.

Uniform Child Custody Jurisdiction Act, Title 40, ch. 7, part 1.

40-1-106. Parts of code not applicable. The provisions of other portions of this code in relation to contracts and the capacity of persons to enter into them have no application to the contract of marriage.

History: En. Sec. 58, Civ. C. 1895; re-en. Sec. 3615, Rev. C. 1907; re-en. Sec. 5708, R.C.M. 1921; Field Civ. C. Sec. 43; re-en. Sec. 5708, R.C.M. 1935; R.C.M. 1947, 48-114.

Cross-References

Cause of action for breach of promise abolished, 27-1-602.

Parties to contracts, Title 28, ch. 2, part 2.

Contracts, Title 28, ch. 2 and 3.

Minors — power to contract, Title 41, ch. 1, part 3.

40-1-107. Form of application, license, marriage certificate, and consent. (1) The director of the department of health and environmental sciences shall prescribe the form for an application for a marriage license, which shall include the following information:

(a) name, sex, address, date and place of birth of each party to the proposed marriage;

(b) if either party was previously married, his name, and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

(c) name and address of the parents or guardian of each party;

(d) whether the parties are related to each other and, if so, their relationship; and

(e) the name and date of birth of any child of whom both parties are parents born prior to the making of the application, unless their parental rights and the parent and child relationship with respect to the child have been terminated.

(2) The director of the department of health and environmental sciences shall prescribe the forms for the marriage license, the marriage certificate, and the consent to marriage.

History: En. 48-305 by Sec. 5, Ch. 536, L. 1975; R.C.M. 1947, 48-305.

Cross-References

Solemnization and registration — consent to marriage, 40-1-301.

Dissolution of marriage, Title 40, ch. 4, part 1.

Relinquishment of parental rights, 40-6-135.

Child legitimized by marriage of parents, 40-6-203.

Parent-child legal relationship termination, Title 41, ch. 3, part 6.

Duty to furnish information, 50-15-108.

Marriage certificates, 50-15-301.

Part 2
License Provisions

40-1-201. License application. (1) No Montana resident may be joined in marriage within this state until a license has been obtained for that purpose from a clerk of the district court.

(2) A license so issued shall authorize a marriage ceremony to be performed in the county where the license is issued or in any other county of this state.

(3) If both parties are nonresidents of the state, the license may be obtained from the clerk of the district court of the county where the marriage ceremony is to be performed. If one of the persons is a nonresident of the county where the license is to issue, his part of the application may be completed and sworn to or affirmed before the person authorized to accept such applications in the county and state in which he resides.

History: En. Sec. 5, Ch. 232, L. 1963; amd. Sec. 8, Ch. 33, L. 1977; R.C.M. 1947, 48-146; amd. Sec. 1, Ch. 42, L. 1983.

Cross-References

Duties of Clerk of District Court, Title 3, ch. 5, part 5.

Discrimination in issuance of licenses prohibited, 49-3-204.

40-1-202. License issuance. When a marriage application has been completed and signed by both parties to a prospective marriage and at least one party has appeared before the clerk of the district court and paid the marriage license fee of $30, the clerk of the district court shall issue a license to marry and a marriage certificate form upon being furnished:

(1) satisfactory proof that each party to the marriage will have attained the age of 18 years at the time the marriage license is effective or will have attained the age of 16 years and has obtained judicial approval as provided in 40-1-213;

(2) satisfactory proof that the marriage is not prohibited; and

(3) a certificate of the results of any medical examination required by the laws of this state.

History: En. 48-306 by Sec. 6, Ch. 536, L. 1975; R.C.M. 1947, 48-306; amd. Sec. 6, Ch. 677, L. 1979; amd. Sec. 2, Ch. 493, L. 1981.

Cross-References

Fees of Clerk of District Court, 25-1-201.

Prohibited marriages, 40-1-401.

Minors and adults defined, 41-1-101.

Marriage certificates, 50-15-301.

Funding for battered spouses grant programs, 52-6-105.

40-1-203. Proof of age and medical certificate required. (1) Before a person authorized by law to issue marriage licenses may issue a marriage license, each applicant therefor shall exhibit to him a birth certificate or other satisfactory evidence of age and, if the applicant is a minor, the approval required by 40-1-213. Each female applicant, unless exempted on medical grounds by rule of the department of health and environmental sciences, shall file with the license issuer a medical certificate from a physician, licensed to practice medicine and surgery in any state or United States territory, or any other person authorized by rule of the department to make a medical certificate. The certificate shall state that the applicant has been given a standard serological test and that the report of the results of the serological test has been exhibited to the applicant tested and that the other party to the proposed marriage contract has examined the report of the serological test.

(2) A person who by law is able to obtain a marriage license in this state is also able to give consent to any examinations and tests required by this section. In submitting the blood specimen to the laboratory, the physician or any other person authorized by the laws of Montana to make a medical certificate shall designate that it is a premarital test.

History: En. Sec. 1, Ch. 208, L. 1947; amd. Sec. 1, Ch. 21, L. 1959; amd. Sec. 1, Ch. 248, L. 1973; amd. Sec. 4, Ch. 33, L. 1977; R.C.M. 1947, 48-134; amd. Sec. 1, Ch. 33, L. 1979; amd. Sec. 1, Ch. 228, L. 1981; amd. Sec. 1, Ch. 154, L. 1983; amd. Sec. 1, Ch. 186, L. 1989.

Cross-References

General duties of Clerk of the District Court, 3-5-501.

Declaration of invalidity, 40-1-402.

Minors and adults defined, 41-1-101.

Birth certificate to be filed, 50-15-201.

Serological test for syphilis, 50-18-104.

Certificate of freedom from sexually transmitted disease not to be issued, 50-18-111.

40-1-204. Contents and form of medical certificate. (1) The medical certificate shall contain a statement from a physician or other person authorized by rule of the department of health and environmental sciences to make such reports, setting forth:

(a) the name of the test;

(b) the name and address of the physician or other person authorized by rule of the department to sign the certificate;

(c) the name and address of the laboratory performing the test; and

(d) the name of the person whose blood was tested.

(2) In the event that an error is discovered in the results of the test, such results will be expunged from the records of the department of health and environmental sciences.

(3) (a) The certificate and statement shall be on a form to be provided and distributed, upon request, by the department of health and environmental sciences.

(b) This form is hereinafter referred to in 40-1-205 through 40-1-209 as the “certificate form”.

History: En. Sec. 2, Ch. 208, L. 1947; amd. Sec. 104, Ch. 349, L. 1974; amd. Sec. 5, Ch. 33, L. 1977; R.C.M. 1947, 48-135; amd. Sec. 2, Ch. 154, L. 1983; amd. Sec. 2, Ch. 186, L. 1989.

Cross-References

Certificates, 50-15-109.

Certificate of freedom from sexually transmitted disease not to be issued, 50-18-111.

40-1-205. Certificates from other states or for military personnel — when acceptable. Certificate forms provided by other states having comparable laws will be accepted for persons who have received a standard serological test outside of Montana. Certificates provided by the United States armed forces will be accepted for military personnel if such certificates are signed by a medical officer commissioned in the United States armed forces or United States public health service and the certificates state the examinations are standard serological tests.

History: **En. Sec. 3, Ch. 208, L. 1947; amd. Sec. 2, Ch. 248, L. 1973; R.C.M. 1947, 48-136; amd. Sec. 2, Ch. 228, L. 1981; amd. Sec. 1, Ch. 25, L. 1985; amd. Sec. 3, Ch. 186, L. 1989.**

Cross-References

Serological test for syphilis, 50-18-104.

40-1-206. Premarital test — approved laboratories — rules. (1) For the purpose of 40-1-203 through 40-1-209, a standard serological test shall be a test for rubella immunity which is approved by the department of health and environmental sciences.

(2) The standard serological test is acceptable for the purposes of 40-1-203 through 40-1-209 only if it is performed by one of the following:

(a) the laboratory of the department;

(b) a laboratory approved by the department;

(c) a laboratory operated by any other state; or

(d) a laboratory operated by the United States public health service or the United States armed forces.

(3) The standard serological test may be made on request at the laboratory of the department of health and environmental sciences.

(4) The department of health and environmental sciences shall adopt reasonable rules for:

(a) reports to be submitted by any laboratory making tests and the manner of furnishing the reports to the certifying physician and the state; and

(b) exemptions, on medical grounds, from the premarital serological test.

History: **En. Sec. 4, Ch. 208, L. 1947; amd. Sec. 3, Ch. 248, L. 1973; amd. Sec. 6, Ch. 33, L. 1977; R.C.M. 1947, 48-137; amd. Sec. 3, Ch. 154, L. 1983.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Serological test for syphilis, 50-18-104.

40-1-207. Examination by health officer. Any applicant for a marriage license may, if he so chooses, be examined free of charge by the county physician or county health officer.

History: **En. Sec. 5, Ch. 208, L. 1947; R.C.M. 1947, 48-138.**

Cross-References

Serological test for syphilis, 50-18-104.

Powers and duties of health officers, 50-18-107.

40-1-208. Penalties. (1) An applicant for a marriage license, a physician or other person authorized by rule of the department of health and environmental sciences to make a medical certificate, or any person in charge of or authorized to make reports or statements for a laboratory who misrepresents his identity or any of the facts called for by the certificate form prescribed by 40-1-203 through 40-1-205, any licensing officer who issues a marriage license without having received the certificate form, if required, or who has reason to believe that any of the facts on the certificate form have been misrepresented and nevertheless issues a marriage license, or any person who otherwise fails to comply with the provisions of 40-1-203 through 40-1-209 is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $100.

(2) Medical certificates, laboratory statements or reports, and applications referred to in 40-1-203 through 40-1-209 are confidential and may not be divulged to or open to inspection by any person other than state or local health officers or their representatives. A person who divulges such information or opens to inspection such certificates, statements, reports, or applications, without authority, to any person not by law entitled to the same is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $100.

History: En. Sec. 6, Ch. 208, L. 1947; amd. Sec. 7, Ch. 33, L. 1977; R.C.M. 1947, 48-139; amd. Sec. 4, Ch. 154, L. 1983; amd. Sec. 4, Ch. 186, L. 1989.

Cross-References

Misdemeanors — classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Permissible release of information concerning infected persons, 50-18-109.

Violation a misdemeanor, 50-18-113.

40-1-209. Expenses. The department of health and environmental sciences shall provide the necessary printing and pay the necessary expenses relative to the checking and approval of laboratories, clerical and technical assistance involved in the administration of 40-1-203 through 40-1-209, and other expenditures necessary in carrying out the provisions and purposes of 40-1-203 through 40-1-209. All claims for such expenses shall be submitted for approval and audit to the department of health and environmental sciences and shall be paid in accordance with law.

History: En. Sec. 7, Ch. 208, L. 1947; amd. Sec. 104, Ch. 349, L. 1974; R.C.M. 1947, 48-140.

Cross-References

Rules of Department binding, 50-18-105.

40-1-210. No license to be issued when applicants under influence of liquor or drug. No license to marry shall be issued if, at the time of making application, either of the applicants is under the influence of intoxicating liquor or narcotic drug.

History: En. Sec. 6, Ch. 232, L. 1963; R.C.M. 1947, 48-147.

Cross-References

Declaration of invalidity, 40-1-402.

40-1-211. Repealed. Sec. 1, Ch. 124, L. 1979.

History: En. Sec. 7, Ch. 232, L. 1963; R.C.M. 1947, 48-148.

40-1-212. Effective period of license. A license to marry is effective upon issuance and expires after 180 days.

History: En. 48-307 by Sec. 7, Ch. 536, L. 1975; R.C.M. 1947, 48-307; amd. Sec. 1, Ch. 7, L. 1987.

40-1-213. Judicial approval. (1) The district court may order the clerk of the district court to issue a marriage license and a marriage certificate form to a party aged 16 or 17 years who has no parent capable of consenting to his marriage or has the consent of both parents or of the parent having the actual care, custody, and control to his marriage, if capable of giving consent, or of his guardian. The court must require both parties to participate in a period of marriage counseling involving at least two separate counseling sessions not less than 10 days apart with a designated counselor as a condition of the order for issuance of a marriage license and a marriage certificate form under this section.

(2) A marriage license and a marriage certificate form may be issued under this section only if the court finds that the underaged party is capable of assuming the responsibilities of marriage and the marriage will serve his best interest. Pregnancy alone does not establish that the best interest of the party will be served.

(3) The district court shall authorize performance of a marriage by proxy upon the showing required by the provisions on solemnization.

History: En. 48-308 by Sec. 8, Ch. 536, L. 1975; R.C.M. 1947, 48-308; amd. Sec. 1, Ch. 183, L. 1979.

Cross-References

Minors and adults defined, 41-1-101.

Release of information by physician concerning pregnant minor, 41-1-402, 41-1-403.

Part 3
Solemnization

40-1-301. Solemnization and registration. (1) A marriage may be solemnized by a judge of a court of record, by a public official whose powers include solemnization of marriages, by a mayor, city judge, or justice of the peace, by a tribal judge, or in accordance with any mode of solemnization recognized by any religious denomination, Indian nation or tribe, or native group. Either the person solemnizing the marriage or, if no individual acting alone solemnized the marriage, a party to the marriage shall complete the marriage certificate form and forward it to the clerk of the district court.

(2) If a party to a marriage is unable to be present at the solemnization, he may authorize in writing a third person to act as his proxy. If the person solemnizing the marriage is satisfied that the absent party is unable to be present and has consented to the marriage, he may solemnize the marriage by proxy. If he is not satisfied, the parties may petition the district court for an order permitting the marriage to be solemnized by proxy.

(3) The solemnization of the marriage is not invalidated by the fact that the person solemnizing the marriage was not legally qualified to solemnize it, if either party to the marriage believed him to be so qualified.

History: En. 48-309 by Sec. 9, Ch. 536, L. 1975; amd. Sec. 9, Ch. 33, L. 1977; R.C.M. 1947, 48-309(1), (2), (4); amd. Sec. 1, Ch. 247, L. 1979; amd. Sec. 3, Ch. 348, L. 1985.

Cross-References

Powers of judicial officers, Title 3, ch. 1, part 4.

Form of application, license, marriage certificate, and consent, 40-1-107.

Powers of attorney, Title 72, ch. 5, part 5.

40-1-302 through 40-1-310 reserved.

40-1-311. Declaration of marriage without solemnization. (1) Persons desiring to consummate a marriage by written declaration in this state without the solemnization provided for in 40-1-301 must, prior to executing the declaration, secure the medical certificate required by this chapter, which shall be firmly attached to the declaration and shall be filed by the clerk of the district court in the county where the contract was executed.

(2) A declaration of marriage must contain substantially the following:

(a) the names, ages, and residences of the parties;

(b) the fact of marriage;

(c) the name of father and maiden name of mother of both parties and address of each;

(d) a statement that both parties are legally competent to enter into the marriage contract.

(3) The declaration must be subscribed by the parties and attested by at least two witnesses and formally acknowledged before the clerk of the district court of the county.

(4) The fee for filing a declaration is $30 and shall be paid to the clerk at time of filing.

History: **En. Sec. 85, Civ. C. 1895; re-en. Sec. 3631, Rev. C. 1907; re-en. Sec. 5724, R.C.M. 1921; Cal. Civ. C. Sec. 75; re-en. Sec. 5724, R.C.M. 1935; amd. Sec. 1, Ch. 275, L. 1959; amd. Sec. 44, Ch. 536, L. 1975; R.C.M. 1947, 48-130; amd. Sec. 2, Ch. 33, L. 1979; amd. Sec. 2, Ch. 12, L. 1983.**

Cross-References

General duties of Clerk of the District Court, 3-5-501.

Fee for filing declaration of marriage, 25-1-201.

Who may contract, 28-2-201.

Proof of age and medical certificate required, 40-1-203.

Validity of common-law marriage, 40-1-403.

Funding of battered spouses grant program, 52-6-105.

40-1-312. Persons who may draft declaration of marriage. It shall be unlawful for any person other than the parties to such written declaration to draw any such declaration of marriage unless he shall have been duly licensed to practice law in the state of Montana.

History: **En. Sec. 2, Ch. 275, L. 1959; R.C.M. 1947, 48-130.1.**

Cross-References

Attorney certification, 37-61-206.

40-1-313. Penalty. Any person violating the provisions of 40-1-311 or 40-1-312, upon conviction, shall be subject to a fine of not less than $300 or 6 months in a county jail, or both.

History: **En. Sec. 3, Ch. 275, L. 1959; R.C.M. 1947, 48-130.2.**

Cross-References

Misdemeanor defined, 45-2-101.

40-1-314 through 40-1-320 reserved.

40-1-321. Registration of marriage. (1) Upon receipt of the marriage certificate, the clerk of the district court shall register the marriage.

(2) Every person solemnizing a marriage who shall neglect to make and deliver to the clerk of the district court a certificate thereof within 30 days after having solemnized such marriage shall forfeit for such neglect a sum not less than $10 or more than $50; and any clerk of the district court who shall neglect to record such certificate so delivered within 1 month after its delivery shall forfeit the like penalty.

History: **(1)En. 48-309 by Sec. 9, Ch. 536, L. 1975; amd. Sec. 9, Ch. 33, L. 1977; Sec. 48-309, R.C.M. 1947; (2)En. Sec. 7, p. 409, Bannack Stat.; re-en. Sec. 7, p. 520, Cod. Stat. 1871; re-en. Sec. 860, 5th Div. Rev. Stat. 1879; re-en. Sec. 1421, 5th Div. Comp. Stat. 1887; amd. Sec. 79, Civ. C. 1895; re-en. Sec. 3625, Rev. C. 1907; re-en. Sec. 5718, R.C.M. 1921; re-en. Sec. 5718, R.C.M. 1935; Sec. 48-124, R.C.M. 1947; R.C.M. 1947, 48-124, 48-309(3).**

Cross-References

Clerk of Court — general duties, Title 3, ch. 5, part 5.

Manner of keeping records and storing documents, 7-4-2221.

Documents subject to recording, 7-4-2613.

Index to records of marriage certificates, 7-4-2619.

40-1-322. Certificate and copy presumptive evidence. The original certificate of marriage and the record thereof by the clerk of the district court or a copy of such record duly certified by the clerk of the district court shall be received by all courts in all places as presumptive evidence of such marriage.

History: En. Sec. 10, p. 410, Bannack Stat.; re-en. Sec. 10, p. 521, Cod. Stat. 1871; re-en. Sec. 863, 5th Div. Rev. Stat. 1879; re-en. Sec. 1424, 5th Div. Comp. Stat. 1887; amd. Sec. 81, Civ. C. 1895; re-en. Sec. 3627, Rev. C. 1907; re-en. Sec. 5720, R.C.M. 1921; re-en. Sec. 5720, R.C.M. 1935; amd. Sec. 3, Ch. 33, L. 1977; R.C.M. 1947, 48-126.

Cross-References

Clerk of Court — duties generally, Title 3, ch. 5, part 5.

Definition and examples of disputable presumptions, 26-1-602.

40-1-323. Proof of solemnized marriage when no record. If the record of the solemnization of a marriage heretofore entered into has been lost or destroyed and not known to exist, the parties may join in a written declaration of such marriage, substantially showing:

(1) the names, ages, and residences of the parties;

(2) the date and place of marriage and other pertinent facts of the marriage;

(3) that the record of the solemnized marriage has become lost or destroyed, as the case may be, and is not known to exist.

History: En. Sec. 86, Civ. C. 1895; re-en. Sec. 3632, Rev. C. 1907; re-en. Sec. 5725, R.C.M. 1921; Cal. Civ. C. Sec. 76; re-en. Sec. 5725, R.C.M. 1935; amd. Sec. 1, Ch. 276, L. 1959; R.C.M. 1947, 48-131.

Cross-References

Validity of common-law marriage, 40-1-403.

40-1-324. Declaration to be acknowledged and recorded. The written declaration of marriage provided for in 40-1-323 shall be attested by at least two witnesses and formally acknowledged by an official authorized to administer oaths in the state of Montana. The filing of the declaration with the clerk of the district court in the county of the residence of the parties shall serve as an official record of the marriage of the parties.

History: En. Sec. 87, Civ. C. 1895; re-en. Sec. 3633, Rev. C. 1907; re-en. Sec. 5726, R.C.M. 1921; Cal. Civ. C. Sec. 77; re-en. Sec. 5726, R.C.M. 1935; amd. Sec. 2, Ch. 276, L. 1959; R.C.M. 1947, 48-132.

Cross-References

Officers who may administer oaths, 1-6-101, 3-1-402.

Duties of Clerk of Court, Title 3, ch. 5, part 5.

Validity of common-law marriage, 40-1-403.

Part 4

Validity of Marriages — Declaration of Invalidity

40-1-401. Prohibited marriages. (1) The following marriages are prohibited:

(a) a marriage entered into prior to the dissolution of an earlier marriage of one of the parties;

(b) a marriage between an ancestor and a descendant or between a brother and a sister, whether the relationship is by the half or the whole blood, or between first cousins;

(c) a marriage between an uncle and a niece or between an aunt and a nephew, whether the relationship is by the half or the whole blood.

(2) Parties to a marriage prohibited under this section who cohabit after removal of the impediment are lawfully married as of the date of the removal of the impediment.

(3) Children born of a prohibited marriage are legitimate.

History: En. 48-310 by Sec. 10, Ch. 536, L. 1975; R.C.M. 1947, 48-310.

Cross-References

Presumption of legitimacy, 26-1-602.

Legitimacy of children born in wedlock, 40-6-201.

Incest, 45-5-507.

Bigamy, 45-5-611.

Marrying a bigamist, 45-5-612.

Declaration of invalidity — vital statistics, 50-15-302.

40-1-402. Declaration of invalidity. (1) The district court shall enter its decree declaring the invalidity of a marriage entered into under the following circumstances:

(a) a party lacked capacity to consent to the marriage at the time the marriage was entered into, either because of mental incapacity or infirmity or because of the influence of alcohol, drugs, or other incapacitating substances, or a party was induced to enter into a marriage by force or duress or by fraud involving the essentials of marriage;

(b) a party lacks the physical capacity to consummate the marriage by sexual intercourse and at the time the marriage was entered into the other party did not know of the incapacity;

(c) a party was under the age of 16 years or was aged 16 or 17 years and did not have the consent of his parents or guardian or judicial approval; or

(d) the marriage is prohibited.

(2) A declaration of invalidity under subsections (1)(a) through (1)(c) may be sought by any of the following persons and must be commenced within the times specified, but in no event may a declaration of invalidity be sought after the death of either party to the marriage:

(a) for lack of capacity to consent because of mental incapacity or infirmity, no later than 1 year after the petitioner obtained knowledge of the described condition;

(b) for lack of capacity to consent because of the influence of alcohol, drugs, or other incapacitating substances, no later than 1 year after the petitioner obtained knowledge of the described condition;

(c) for lack of capacity to consent because of force, duress, or fraud, no later than 2 years after the petitioner obtained knowledge of the described condition;

(d) for the reason set forth in subsection (1)(b), by either party, no later than 4 years after the petitioner obtained knowledge of the described condition;

(e) for the reason set forth in subsection (1)(c), by the underaged party, his parent or guardian, prior to the time the underaged party reaches the age at which he could have married without satisfying the omitted requirement.

(3) A declaration of invalidity for the reason set forth in subsection (1)(d) may be sought by either party, the legal spouse in case of a bigamous marriage, the county attorney, or a child of either party, at any time prior to the death of one of the parties.

(4) Children born of a marriage declared invalid are legitimate.

(5) Unless the court finds, after a consideration of all relevant circumstances, including the effect of a retroactive decree on third parties, that the interests of justice would be served by making the decree not retroactive, it shall declare the marriage invalid as of the date of the marriage. The provisions of chapter 4 relating to property rights of the spouses, maintenance, support, and custody of children on dissolution of marriage are applicable to nonretroactive decrees of invalidity.

History: En. 48-311 by Sec. 11, Ch. 536, L. 1975; amd. Sec. 1, Ch. 279, L. 1977; R.C.M. 1947, 48-311.

Cross-References

County Attorney — other duties, 7-4-2717.

Presumption of legitimacy, 26-1-602.

Who may contract, 28-2-201.

Consent in general, Title 28, ch. 2, part 3.

Circumstances which affect validity of apparent consent, Title 28, ch. 2, part 4.

Proof of age and medical certificate required, 40-1-203.

Judicial approval, 40-1-213.

Defenses to divorce abolished, 40-4-105.

Legitimacy of children born in wedlock, 40-6-201.

Incest, 45-5-507.

Bigamy, 45-5-611.

Marrying a bigamist, 45-5-612.

Revocation of provision for spouse in will by divorce or annulment, 72-2-528.

40-1-403. Validity of common-law marriage. Common-law marriages are not invalidated by this chapter. Declarations of marriage pursuant to 40-1-311 through 40-1-313, 40-1-323, and 40-1-324 are not invalidated by this chapter.

History: En. 48-314 by Sec. 14, Ch. 536, L. 1975; R.C.M. 1947, 48-314.

Cross-References

Presumption of marriage, 26-1-602.

40-1-404. Putative spouse. Any person who has cohabited with another to whom he is not legally married in the good faith belief that he was married to that person is a putative spouse until knowledge of the fact that he is not legally married terminates his status and prevents acquisition of further rights. A putative spouse acquires the rights conferred upon a legal spouse, including the right to maintenance following termination of his status, whether or not the marriage is prohibited (40-1-401) or declared invalid (40-1-402). If there is a legal spouse or other putative spouses, rights acquired by a putative spouse do not supersede the rights of the legal spouse or those acquired by other putative spouses, but the court shall apportion property, maintenance, and support rights among the claimants as appropriate in the circumstances and in the interests of justice.

History: En. 48-312 by Sec. 12, Ch. 536, L. 1975; R.C.M. 1947, 48-312.

Cross-References

"Good faith" defined, 30-1-201.

Obligation of good faith — U.C.C., 30-1-203.

Disposition of property, 40-4-202.

Maintenance, 40-4-203.

Child support, 40-4-204.

UPC — elective share of surviving spouse, Title 72, ch. 2, part 2.

UPC — spouse and children unprovided for in wills, Title 72, ch. 2, part 3.

UPC — effect of divorce, annulment, or separation decree, 72-2-812.

CHAPTER 2

HUSBAND AND WIFE

Part 1 — Joint Interests, Obligations, and Powers

40-2-101. Mutual obligations of husband and wife.
40-2-102. Duties of husband and wife as to support.
40-2-103. Support of spouse.
40-2-104. Liability of married person when abandoned by spouse.
40-2-105. Husband and wife as joint tenants.
40-2-106. Liability for acts or debts of spouse.
40-2-107. May sue and be sued.
40-2-108. Married person as personal representative, guardian, conservator, or trustee.
40-2-109. Right of person to sue spouse for intentional tort.

Part 2 — Individual Property

40-2-201. When husband's and wife's interests separate.
40-2-202. Individual property of married person.
40-2-203. Inventory of individual personal property of married person.
40-2-204. Effect of filing inventory.
40-2-205. Earnings and accumulations of married person.
40-2-206. Same — when separated.
40-2-207. Work and labor of married person.
40-2-208. Debts of spouse contracted before marriage.
40-2-209. Individual property of married person — how far liable.
40-2-210. Necessity determined by standard of living.

Part 3 — Power of Married Persons to Contract

40-2-301. Husband and wife may contract.
40-2-302. Liability of spouse.
40-2-303. Alteration of legal relation by contract — separation agreement.
40-2-304. Consideration for separation.
40-2-305 through 40-2-310 reserved.
40-2-311. Rights of husband and wife — how governed.
40-2-312. Marriage settlement contracts — how executed.
40-2-313. Repealed.
40-2-314. Effect of recording.
40-2-315. Marriage settlement by minors.

Part 4 — Battered Spouses Grant Programs
(Renumbered by Code Commissioner, 1991)

Part 5 reserved

Part 6 — Uniform Premarital Agreement Act

40-2-601. Short title.
40-2-602. Application and construction.
40-2-603. Definitions.
40-2-604. Formalities.
40-2-605. Content.
40-2-606. When agreement becomes effective.
40-2-607. Amendment — revocation.
40-2-608. Enforcement.
40-2-609. Enforcement when marriage void.
40-2-610. Limitation of actions.

Chapter Cross-References

Residence of spouses, 1-1-215.

Tax law relating to family, 7-16-4105, 15-6-201, 15-7-307, 15-30-112, 15-30-113, 15-30-122, 15-30-123, 15-30-134, 15-30-142.

Person's residence presumed to be that of his family for voting purposes, 13-1-112.

Beneficiaries under PERS, 19-2-801, 19-2-802.

Civil procedure provisions relating to families, 25-9-102, 27-19-306, 70-19-102, 70-27-111.

Execution of judgment when family property and interest involved, Title 25, ch. 13.

Montana Rules of Civil Procedure relating to marriage, children, and family, Rules 4D(2)(b), 4D(2)(c), 4D(5)(a)(iii), 20(a), 27(a)(2), M.R.Civ.P. (see Title 25, ch. 20).

When appeal may be taken, Rule 1(c), M.R.App.P., (see Title 25, ch. 21).

Evidence rules relating to marriage, children, and family, 26-1-601, 26-1-602, 26-1-802.

No cause of action for alienation of affections, 27-1-601.

Contracts — what constitutes duress, 28-2-402, 28-2-403.

Agreement to marry to be in writing, 28-2-903.

Assignment of wages by married person, 31-1-306.

Labor law concerning family members, 31-1-306, 39-1-102 through 39-1-104, 39-2-101, 39-3-201, 39-3-203, 39-3-204, 39-3-406, 39-6-101, 39-6-102, 39-7-103; Title 39, ch. 7, part 2; 39-33-101 through 39-33-103, 53-7-201, 53-7-202.

Banking law concerning husband and wife, 32-1-107.

Insurable interest, Title 33, ch. 15, part 2.

Nursing by members of family, 37-8-103.

Payment of unemployment compensation, 39-51-102, 39-51-201 through 39-51-206, 39-51-601, 39-51-2301 through 39-51-2307.

Workers' compensation law relating to families, 39-71-116 through 39-71-120, 39-71-602, 39-71-723, 39-71-737, 39-71-741, 39-71-742, 39-71-2203.

General criminal provisions relating to families, 45-1-205, 45-2-101, 45-2-211.

Offenses against the person of a family member, 45-5-304, 45-5-507, 45-5-511, 45-5-602 through 45-5-604, 45-5-611, 45-5-612, 45-5-621 through 45-5-624, 50-20-104 through 50-20-108.

Offenses against public order by family members, 45-8-113, 45-8-344.

Criminal procedure provisions relating to family members, 46-16-212, 46-23-1022, 46-23-1102.

Human Rights, Title 49.

Discrimination based on marital status, 49-2-303, 49-3-103;.

Discrimination in insurance and retirement plans prohibited, 49-2-309.

Reporting of death, marriages, divorces, annulments, etc., 50-15-108.

General welfare provisions relating to the family, 53-2-101, 53-2-201, 53-2-206, 53-2-610, 53-2-611; Title 53, ch. 3.

Automobile registration may be transferred to heir without letters of administration — when, 61-3-201.

Property law concerning husband and wife, 70-1-306, 70-1-307, 70-1-314, 70-1-404, 70-1-420, 70-1-422, 70-15-303.

Homesteads, Title 70, ch. 32.

Distribution of estate property, Title 72, ch. 3, part 9.

Housing Act of 1975, Title 90, ch. 6.

Part 1

Joint Interests, Obligations, and Powers

40-2-101. Mutual obligations of husband and wife. Husband and wife contract toward each other obligations of mutual respect, fidelity, and support.

History: En. Sec. 210, Civ. C. 1895; re-en. Sec. 3690, Rev. C. 1907; re-en. Sec. 5782, R.C.M. 1921; Cal. Civ. C. Sec. 155; Field Civ. C. Sec. 75; re-en. Sec. 5782, R.C.M. 1935; R.C.M. 1947, 36-101.

Cross-References

Spousal privilege, 26-1-802.

How obligations arise, 28-1-102.

Contracts, Title 28, ch. 2, parts 2 and 3.

Competency of spouses, 46-16-212.

40-2-102. Duties of husband and wife as to support. Insofar as each is able, the husband and wife shall support each other out of their property and labor. As used in this section, the word "support" includes the nonmonetary support provided by a spouse as homemaker.

History: En. Sec. 212, Civ. C. 1895; re-en. Sec. 3692, Rev. C. 1907; re-en. Sec. 5784, R.C.M. 1921; Field Civ. C. Sec. 77; re-en. Sec. 5784, R.C.M. 1935; amd. Sec. 1, Ch. 293, L. 1975; R.C.M. 1947, 36-103.

Cross-References

When husband's and wife's interests separate, 40-2-201.

Earnings and accumulations — same — when separated, 40-2-206.

Nonsupport, 45-5-621.

40-2-103. Support of spouse. If a married person who is able neglects to make adequate provision for the financial support of his spouse, except in the cases mentioned in 40-2-104, any other person may in good faith supply the spouse with articles necessary for support and recover the reasonable value thereof from the married person who has failed to provide such support.

History: En. Sec. 244, Civ. C. 1895; re-en. Sec. 3724, Rev. C. 1907; re-en. Sec. 5800, R.C.M. 1921; Cal. Civ. C. Sec. 174; Field Civ. C. Sec. 84; re-en. Sec. 5800, R.C.M. 1935; amd. Sec. 12, Ch. 293, L. 1975; R.C.M. 1947, 36-119.

Cross-References

Cases in which property may be attached, 27-18-101.

Agency, Title 28, ch. 10.

"Good faith" defined, 30-1-201.

Minor cannot disaffirm contract for necessaries, 41-1-305.

Nonsupport, 45-5-621.

40-2-104. Liability of married person when abandoned by spouse. A married person abandoned by his spouse is not liable for the spouse's support until the spouse offers to return, unless the spouse was justified by the person's misconduct in abandoning him, nor is a married person liable for support of a spouse who is living separate from him by agreement, unless such support is stipulated in the agreement.

History: En. Sec. 245, Civ. C. 1895; re-en. Sec. 3725, Rev. C. 1907; re-en. Sec. 5801, R.C.M. 1921; Cal. Civ. C. Sec. 175; Based on Field Civ. C. Sec. 85; re-en. Sec. 5801, R.C.M. 1935; amd. Sec. 13, Ch. 293, L. 1975; R.C.M. 1947, 36-120.

Cross-References

Extent to which existing legal or moral obligation is good consideration, 28-2-802.

Separation agreement, 40-4-201.

Nonsupport, 45-5-621.

40-2-105. Husband and wife as joint tenants. A husband and wife may hold real or personal property together, jointly or in common.

History: En. Sec. 217, Civ. C. 1895; re-en. Sec. 3697, Rev. C. 1907; re-en. Sec. 5789, R.C.M. 1921; Cal. Civ. C. Sec. 161; Field Civ. C. Sec. 82; re-en. Sec. 5789, R.C.M. 1935; R.C.M. 1947, 36-108.

Cross-References

Joint obligations, Title 28, ch. 1, part 3.

Property joint tenancy and tenancy in common, Title 70, ch. 1, part 3.

40-2-106. Liability for acts or debts of spouse. Neither husband nor wife, as such, is answerable for the acts of the other or liable for the debts contracted by the other; provided, however, that the expenses for necessaries of the family and of the education of the children are chargeable upon the property of both husband and wife, or either of them, and in relation thereto they may be sued jointly or separately.

History: En. Sec. 218, Civ. C. 1895; re-en. Sec. 3698, Rev. C. 1907; amd. Sec. 1, Ch. 129, L. 1915; re-en. Sec. 5790, R.C.M. 1921; re-en. Sec. 5790, R.C.M. 1935; R.C.M. 1947, 36-109.

Cross-References

Judgment for or against married person, 25-9-102.

Redemption by debtor from spouse, 25-13-805.

Effect of redemption by debtor or debtor's spouse, 25-13-809.

Extent to which existing legal or moral obligation is good consideration, 28-2-802.

Obligations of parents for the support and education of their children, 40-6-211.

Reciprocal duties of parents and children in maintaining each other, 40-6-214.

When parent liable for necessaries supplied to child, 40-6-215.

When parent not liable for support furnished child, 40-6-216.

Married person not bound for support of spouse's children by former marriage, 40-6-217.

Minor cannot disaffirm contract for necessaries, 41-1-305.

40-2-107. May sue and be sued. A married person may sue and be sued in the same manner as if he were sole.

History: En. Sec. 1444, 5th Div. Comp. Stat. 1887; re-en. Sec. 253, Civ. C. 1895; re-en. Sec. 3733, Rev. C. 1907; re-en. Sec. 5809, R.C.M. 1921; re-en. Sec. 5809, R.C.M. 1935; amd. Sec. 15, Ch. 293, L. 1975; R.C.M. 1947, 36-128.

Cross-References

Capacity of married person to be a party, 25-5-201.

Who may defend when spouse sued, 25-5-202.

Judgment for or against married person, 25-9-102.

Capacity to sue or be sued, Rule 17(b), M.R.Civ.P. (see Title 25, ch. 20).

Spousal privilege, 26-1-802.

Action by parent or guardian for injury to or death of child or ward, 27-1-512.

Action for wrongful death of adult, 27-1-513.

Who may sue for whose seduction, 27-1-514.

Cause of action for alienation of affections abolished, 27-1-601.

Testimony of spouse admissible in promotion of prostitution cases, 45-5-604.

40-2-108. Married person as personal representative, guardian, conservator, or trustee. A married person may be a personal representative, guardian, conservator, or trustee and may bind himself and the estate he represents without any act or assent on the part of the person's spouse.

History: En. Sec. 1443, 5th Div. Comp. Stat. 1887; re-en. Sec. 252, Civ. C. 1895; re-en. Sec. 3732, Rev. C. 1907; re-en. Sec. 5808, R.C.M. 1921; re-en. Sec. 5808, R.C.M. 1935; amd. Sec. 14, Ch. 293, L. 1975; R.C.M. 1947, 36-127.

Cross-References

Personal representative — powers and duties, Title 72, ch. 3, part 6.

Conservators generally, Title 72, ch. 5, parts 1 and 4.

Guardians of minors, Title 72, ch. 5, part 2.

Guardians of incapacitated persons, Title 72, ch. 5, part 3.

Trust administration, Title 72, ch. 34.

40-2-109. Right of person to sue spouse for intentional tort. A person has a cause of action against his spouse for damages caused by the spouse's intentional tort against such person, and the common law doctrine of interspousal tort immunity is, to that extent, abolished.

History: En. Sec. 1, Ch. 407, L. 1979.

Cross-References

Capacity to sue or be sued, Rule 17(b), M.R.Civ.P. (see Title 25, ch. 20).

Liability, Title 27, ch. 1, part 7.

Duty of care, 28-1-201.

Part 2
Individual Property

40-2-201. When husband's and wife's interests separate. Neither husband nor wife has any interest in the property of the other, except as mentioned in 40-2-102, but neither can be excluded from the other's dwelling unless enjoined by a court.

History: En. Sec. 213, Civ. C. 1895; re-en. Sec. 3693, Rev. C. 1907; re-en. Sec. 5785, R.C.M. 1921; Cal. Civ. C. Sec. 157; Field Civ. C. Sec. 78; re-en. Sec. 5785, R.C.M. 1935; R.C.M. 1947, 36-104; amd. Sec. 2, Ch. 407, L. 1979.

40-2-202. Individual property of married person. All the property of a married person owned before marriage and that acquired afterwards is his individual property. The married person may, without consent, agreement, and signature of his spouse, convey and transfer his individual property, real or personal, including the fee simple title to real property, or execute a power of attorney for the conveyance and transfer thereof.

History: En. Sec. 220, Civ. C. 1895; re-en. Sec. 3700, Rev. C. 1907; re-en. Sec. 5792, R.C.M. 1921; Cal. Civ. C. Sec. 162; amd. Sec. 1, Ch. 63, L. 1923; re-en. Sec. 5792, R.C.M. 1935; amd. Sec. 3, Ch. 293, L. 1975; R.C.M. 1947, 36-111.

Cross-References

Dissolution — disposition of property, 40-4-202.

Transfer of property, Title 70, ch. 1, part 5; Title 70, ch. 20.

Married persons — execution of power in respect to real property, 70-15-303.

Power of attorney, estates and probate proceedings, Title 72, ch. 5, part 5.

40-2-203. Inventory of individual personal property of married person. A married person's title to and ownership of his individual property may be proved or demonstrated in the same manner that a single person's ownership of or title to his individual property may be proved. Provided, however, that if a married person chooses, he may make out and sign an inventory of his individual personal property, which inventory shall be acknowledged or proved in the same manner required by law for the acknowledgment or proof of a grant of real property and recorded in the office of the county clerk of the county in which the person lives.

History: En. Sec. 221, Civ. C. 1895; re-en. Sec. 3701, Rev. C. 1907; re-en. Sec. 5793, R.C.M. 1921; Cal. Civ. C. Sec. 165; re-en. Sec. 5793, R.C.M. 1935; amd. Sec. 4, Ch. 293, L. 1975; R.C.M. 1947, 36-112.

Cross-References

Documents subject to recording, 7-4-2613.

Action for quieting title to personal property, 70-2-201.

Partition of personal property, 70-2-211.

40-2-204. Effect of filing inventory. The filing of the inventory in the clerk's office is notice and prima facie evidence of the title of the person so filing.

History: En. Sec. 222, Civ. C. 1895; re-en. Sec. 3702, Rev. C. 1907; re-en. Sec. 5794, R.C.M. 1921; Cal. Civ. C. Sec. 166; re-en. Sec. 5794, R.C.M. 1935; amd. Sec. 5, Ch. 293, L. 1975; R.C.M. 1947, 36-113.

40-2-205. Earnings and accumulations of married person. The earnings and accumulations of a married person are not liable for the debts of that person's spouse except for debts incurred for necessary articles procured for the use and benefit of the married person, his spouse, or minor children.

History: En. Sec. 223, Civ. C. 1895; re-en. Sec. 3703, Rev. C. 1907; re-en. Sec. 5795, R.C.M. 1921; Cal. Civ. C. Sec. 168; re-en. Sec. 5795, R.C.M. 1935; amd. Sec. 6, Ch. 293, L. 1975; R.C.M. 1947, 36-114.

Cross-References

Liability for acts or debts of spouse, 40-2-106.

Obligations of parents for the support and education of their children, 40-6-211.

Allowance to parent, 40-6-212.

Reciprocal duties of parents and children in maintaining each other, 40-6-214.

When parent liable for necessaries supplied to child, 40-6-215.

When parent not liable for support furnished child, 40-6-216.

Minor cannot disaffirm contract for necessaries, 41-1-305.

Nonsupport, 45-5-621.

Endangering the welfare of children, 45-5-622.

40-2-206. Same — when separated. The earnings and accumulations of a married person and of his minor children living with him or in his custody, while he is living separate from his spouse, are the individual property of such person except that, to the extent that a mutual duty of support between the husband and wife as established by 40-2-102 still exists, such earnings and accumulations are liable for debts incurred for necessary articles procured for the use and benefit of the married person, his spouse, or minor children.

History: En. Sec. 224, Civ. C. 1895; re-en. Sec. 3704, Rev. C. 1907; re-en. Sec. 5796, R.C.M. 1921; Cal. Civ. C. Sec. 169; re-en. Sec. 5796, R.C.M. 1935; amd. Sec. 7, Ch. 293, L. 1975; R.C.M. 1947, 36-115.

Cross-References

Liability for acts or debts of spouse, 40-2-106.

Separation agreement, 40-4-201.

Obligations of parents for the support and education of their children, 40-6-211.

Allowance to parent, 40-6-212.

Reciprocal duties of parents and children in maintaining each other, 40-6-214.

When parent liable for necessaries supplied to child, 40-6-215.

When parent not liable for support furnished child, 40-6-216.

Married person not bound for support of spouse's children by former marriage, 40-6-217.

Nonsupport, 45-5-621.

Endangering the welfare of children, 45-5-622.

40-2-207. Work and labor of married person. All work and labor performed by a married person for a person other than his spouse and children shall, unless there is a written agreement on his part to the contrary, be presumed to be performed on his separate account. This section does not affect the liability of earnings for debts incurred for necessary articles procured for the use and benefit of the married person, his spouse, or minor children, as established by 40-2-205, 40-2-206, 40-2-209, and 40-2-210.

History: En. Sec. 1442, 5th Div. Comp. Stat. 1887; re-en. Sec. 225, Civ. C. 1895; re-en. Sec. 3705, Rev. C. 1907; re-en. Sec. 5797, R.C.M. 1921; re-en. Sec. 5797, R.C.M. 1935; amd. Sec. 8, Ch. 293, L. 1975; R.C.M. 1947, 36-116.

Cross-References

Assignment of wages by married person, 31-1-306.

Payment of wages generally, 39-3-204.

Liability for acts or debts of spouse, 40-2-106.

Obligations of parents for the support and education of their children, 40-6-211.

Allowance to parent, 40-6-212.

Reciprocal duties of parents and children in maintaining each other, 40-6-214.

When parent liable for necessaries supplied to child, 40-6-215.

When parent not liable for support furnished child, 40-6-216.

Married person not bound for support of spouse's children by former marriage, 40-6-217.

Nonsupport, 45-5-621.

Endangering the welfare of children, 45-5-622.

40-2-208. Debts of spouse contracted before marriage. The property of a married person is not liable for the debts of the person's spouse contracted before marriage.

History: En. Sec. 226, Civ. C. 1895; re-en. Sec. 3706, Rev. C. 1907; re-en. Sec. 5798, R.C.M. 1921; Cal. Civ. C. Sec. 170; re-en. Sec. 5798, R.C.M. 1935; amd. Sec. 9, Ch. 293, L. 1975; R.C.M. 1947, 36-117.

Cross-References

Redemption by debtor from spouse, 25-13-805.

Effect of redemption by debtor or debtor's spouse, 25-13-809.

Liability for acts or debts of spouse, 40-2-106.

Allowance to parent, 40-6-212.

Married person not bound for support of spouse's children by former marriage, 40-6-217.

40-2-209. Individual property of married person — how far liable. Individual property of a married person listed in an inventory as provided in 40-2-203 and 40-2-204 or otherwise proved to be the individual property of the married person is exempt from all debts and liabilities of that person's spouse, except:

(1) when the debt or liability is for necessary articles procured for the use and benefit of the married person, the spouse, or minor children; or

(2) when the property is in the sole and exclusive possession of the spouse and the creditors have dealt with the spouse in good faith on the credit of the individual property without knowledge that the property does not belong to the spouse.

History: En. Sec. 1, p. 369, Bannack Stat.; re-en. Sec. 1, p. 521, Cod. Stat. 1871; re-en. Sec. 866, 5th Div. Rev. Stat. 1879; re-en. Sec. 1432, 5th Div. Comp. Stat. 1887; amd. Sec. 227, Civ. C. 1895; re-en. Sec. 3707, Rev. C. 1907; re-en. Sec. 5799, R.C.M. 1921; Cal. Civ. C. Sec. 171; re-en. Sec. 5799, R.C.M. 1935; amd. Sec. 10, Ch. 293, L. 1975; R.C.M. 1947, 36-118.

Cross-References

Judgments for or against married person, 25-9-102.

Liability for acts or debts of spouse, 40-2-106.

Obligations of parents for the support and education of their children, 40-6-211.

Allowance to parent, 40-6-212.

Reciprocal duties of parents and children in maintaining each other, 40-6-214.

When parent liable for necessaries supplied to child, 40-6-215.

When parent not liable for support furnished child, 40-6-216.

Married person not bound for support of spouse's children by former marriage, 40-6-217.

Nonsupport, 45-5-621.

Endangering the welfare of children, 45-5-622.

40-2-210. Necessity determined by standard of living. For purposes of determining whether a married person's earnings or individual property are exempt from the debts incurred by the person's spouse, the phrase "necessary articles" includes all such goods and services as are reasonably required to provide for the health, welfare, comfort, and education of the married person, his spouse, and minor children, taking into consideration the earnings, resources, and general standard of living of such persons.

History: En. 36-118.1 by Sec. 11, Ch. 293, L. 1975; R.C.M. 1947, 36-118.1.

Cross-References

Obligations of parents for the support and education of their children, 40-6-211.

When parent liable for necessaries supplied to child, 40-6-215.

Minor cannot disaffirm contract for necessaries, 41-1-305.

Nonsupport, 45-5-621.

Endangering the welfare of children, 45-5-622.

Part 3
Power of Married Persons to Contract

Part Cross-References
Contracts, Title 28, ch. 2 and 3.

40-2-301. Husband and wife may contract. Either husband or wife may enter into any engagement or transaction with the other or with any other person respecting property which either might, if unmarried, subject in transactions between themselves to the general rules which control the actions of persons occupying confidential relations with each other, as defined by the provisions of this code relative to trusts.

History: En. Sec. 214, Civ. C. 1895; re-en. Sec. 3694, Rev. C. 1907; re-en. Sec. 5786, R.C.M. 1921; Cal. Civ. C. Sec. 158; Field Civ. C. Sec. 79; re-en. Sec. 5786, R.C.M. 1935; R.C.M. 1947, 36-105.

Cross-References
Who may contract, 28-2-201.
Mutual obligations of husband and wife, 40-2-101.
Separation agreement, 40-4-201.
Trust code, Title 72, ch. 33 through 36.

40-2-302. Liability of spouse. The contracts made by a married person in respect to his individual property, labor, or services shall not be binding upon the person's spouse nor render him or his property liable therefor; but the contracting person and that person's individual property shall be liable on such contracts in the same manner as if such person were sole.

History: En. Sec. 1446, 5th Div. Comp. Stat. 1887; re-en. Sec. 254, Civ. C. 1895; re-en. Sec. 3734, Rev. C. 1907; re-en. Sec. 5810, R.C.M. 1921; re-en. Sec. 5810, R.C.M. 1935; amd. Sec. 16, Ch. 293, L. 1975; R.C.M. 1947, 36-129.

Cross-References
Judgment for or against married person, 25-9-102.
Liability for acts or debts of spouse, 40-2-106.

40-2-303. Alteration of legal relation by contract — separation agreement. A husband and wife cannot by any contract with each other alter their legal relation, except as to property and except that they may agree, in writing, to an immediate separation and may make provision for the support of either of them and of their children during such separation.

History: En. Sec. 215, Civ. C. 1895; re-en. Sec. 3695, Rev. C. 1907; re-en. Sec. 5787, R.C.M. 1921; Cal. Civ. C. Sec. 159; Based on Field Civ. C. Sec. 80; re-en. Sec. 5787, R.C.M. 1935; R.C.M. 1947, 36-106.

Cross-References
What is unlawful, 28-2-701.
Contracts which violate policy of the law — exemption from responsibility, 28-2-702.
Restraints upon legal proceedings void, 28-2-708.
What contracts must be in writing, 28-2-903.
Legal separation, 40-4-104.
Separation agreement, 40-4-201.
Waiver of rights by spouse, 72-2-224.

40-2-304. Consideration for separation. The mutual consent of the parties is a sufficient consideration for such an agreement as mentioned in 40-2-303.

History: En. Sec. 216, Civ. C. 1895; re-en. Sec. 3696, Rev. C. 1907; re-en. Sec. 5788, R.C.M. 1921; Cal. Civ. C. Sec. 160; Field Civ. C. Sec. 81; re-en. Sec. 5788, R.C.M. 1935; R.C.M. 1947, 36-107.

Cross-References
What constitutes good consideration, 28-2-801.

40-2-305 through 40-2-310 reserved.

40-2-311. Rights of husband and wife — how governed. The property rights of the husband and wife are governed by parts 1 through 3 of this chapter, unless there is a marriage settlement containing stipulations contrary thereto.

History: En. Sec. 247, Civ. C. 1895; re-en. Sec. 3727, Rev. C. 1907; re-en. Sec. 5803, R.C.M. 1921; Cal. Civ. C. Sec. 177; re-en. Sec. 5803, R.C.M. 1935; R.C.M. 1947, 36-122.

Cross-References

Separation agreement, 40-4-201.

Disposition of property, 40-4-202.

40-2-312. Marriage settlement contracts — how executed. Except as provided in part 6 of this chapter, all contracts for marriage settlements must be in writing and executed and acknowledged or proved in like manner as a grant of land is required to be executed and acknowledged or proved.

History: En. Sec. 248, Civ. C. 1895; re-en. Sec. 3728, Rev. C. 1907; re-en. Sec. 5804, R.C.M. 1921; Cal. Civ. C. Sec. 178; re-en. Sec. 5804, R.C.M. 1935; R.C.M. 1947, 36-123; amd. Sec. 11, Ch. 189, L. 1987.

Cross-References

What contracts must be in writing, 28-2-903.

Separation agreement, 40-4-201.

40-2-313. Repealed. Sec. 14, Ch. 189, L. 1987.

History: En. Sec. 249, Civ. C. 1895; re-en. Sec. 3729, Rev. C. 1907; re-en. Sec. 5805, R.C.M. 1921; Cal. Civ. C. Sec. 179; re-en. Sec. 5805, R.C.M. 1935; R.C.M. 1947, 36-124.

40-2-314. Effect of recording. Except as provided in part 6 of this chapter, the recording or nonrecording of such contract has a like effect as the recording or nonrecording of a grant of real property.

History: En. Sec. 250, Civ. C. 1895; re-en. Sec. 3730, Rev. C. 1907; re-en. Sec. 5806, R.C.M. 1921; Cal. Civ. C. Sec. 180; re-en. Sec. 5806, R.C.M. 1935; R.C.M. 1947, 36-125; amd. Sec. 12, Ch. 189, L. 1987.

Cross-References

Effect of recording, Title 70, ch. 21, part 3.

40-2-315. Marriage settlement by minors. A minor capable of contracting marriage may make a valid marriage settlement, as herein provided.

History: En. Sec. 251, Civ. C. 1895; re-en. Sec. 3731, Rev. C. 1907; re-en. Sec. 5807, R.C.M. 1921; Cal. Civ. C. Sec. 181; re-en. Sec. 5807, R.C.M. 1935; R.C.M. 1947, 36-126.

Cross-References

Minor cannot disaffirm certain obligations, 41-1-306.

Part 4

Battered Spouses Grant Programs (Renumbered by Code Commissioner, 1991)

Part Compiler's Comments

Sections Renumbered:

40-2-401. Renumbered 52-6-101.
40-2-402. Renumbered 52-6-102.
40-2-403. Renumbered 52-6-103.
40-2-404. Renumbered 52-6-104.
40-2-405. Renumbered 52-6-105.

Part 5 reserved

Part 6

Uniform Premarital Agreement Act

40-2-601. Short title. This part may be cited as the "Uniform Premarital Agreement Act".

History: En. Sec. 1, Ch. 189, L. 1987.

40-2-602. Application and construction. This part must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this part among the states enacting it.

History: En. Sec. 2, Ch. 189, L. 1987.

40-2-603. Definitions. As used in this part, the following definitions apply:

(1) "Premarital agreement" means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage.

(2) "Property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.

History: En. Sec. 3, Ch. 189, L. 1987.

40-2-604. Formalities. A premarital agreement must be in writing and signed by both parties. It is enforceable without consideration.

History: En. Sec. 4, Ch. 189, L. 1987.

40-2-605. Content. (1) Parties to a premarital agreement may contract with respect to:

(a) the rights and obligations of each of the parties in any of the property of either or both of them, whenever and wherever acquired or located;

(b) the right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property;

(c) the disposition of property upon separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event;

(d) the modification or elimination of spousal support;

(e) the making of a will, trust, or other arrangement to carry out the provisions of the agreement;

(f) the ownership rights in and disposition of the death benefit from a life insurance policy;

(g) the choice of law governing the construction of the agreement; and

(h) any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.

(2) The right of a child to support may not be adversely affected by a premarital agreement.

History: En. Sec. 5, Ch. 189, L. 1987.

40-2-606. When agreement becomes effective. A premarital agreement becomes effective upon marriage.

History: En. Sec. 6, Ch. 189, L. 1987.

40-2-607. Amendment — revocation. After marriage, a premarital agreement may be amended or revoked only by a written agreement signed by both parties. The amended agreement or the revocation is enforceable without consideration.

History: En. Sec. 7, Ch. 189, L. 1987.

40-2-608. Enforcement. (1) A premarital agreement is not enforceable if the party against whom enforcement is sought proves that:

(a) that party did not execute the agreement voluntarily; or

(b) the agreement was unconscionable when it was executed and, before execution of the agreement, that party:

(i) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;

(ii) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and

(iii) did not have or reasonably could not have had an adequate knowledge of the property or financial obligations of the other party.

(2) If a provision of a premarital agreement modifies or eliminates spousal support and that modification or elimination causes one party to the agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, a court, notwithstanding the terms of the agreement, may require the other party to provide support to the extent necessary to avoid that eligibility.

(3) An issue of unconscionability of a premarital agreement must be decided by the court as a matter of law.

History: En. Sec. 8, Ch. 189, L. 1987.

40-2-609. Enforcement when marriage void. If a marriage is declared invalid, an agreement that would otherwise have been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result.

History: En. Sec. 9, Ch. 189, L. 1987.

40-2-610. Limitation of actions. Any statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage of the parties to the agreement. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

History: En. Sec. 10, Ch. 189, L. 1987.

CHAPTER 3

RECONCILIATION

Part 1 — Montana Conciliation Law

40-3-101. Citation.
40-3-102. Purposes.
40-3-103. Use of shall and may.
40-3-104. Application.
40-3-105 through 40-3-110 reserved.
40-3-111. Conciliation court — jurisdiction.
40-3-112. Selection of judges.
40-3-113. Transfer of cases.
40-3-114. Budget.

40-3-115. Probation officers' duties.
40-3-116. Privacy of hearings.
40-3-117 through 40-3-120 reserved.
40-3-121. Filing of petition.
40-3-122. Petition form and contents.
40-3-123. No fees.
40-3-124. Manner of conciliation.
40-3-125. Hearings.
40-3-126. Orders — reconciliation agreement.
40-3-127. Dissolution, declaration of invalidity, or separate maintenance proceeding — effect.

Part 1
Montana Conciliation Law

40-3-101. Citation. This chapter may be cited as the "Montana Conciliation Law".

History: En. Sec. 1, Ch. 238, L. 1963; R.C.M. 1947, 36-201.

40-3-102. Purposes. The purposes of this chapter are to protect the rights of children and to promote the public welfare by preserving, promoting, and protecting family life and the institution of matrimony and to provide means for the reconciliation of spouses and the amicable settlement of domestic and family controversies.

History: En. Sec. 2, Ch. 238, L. 1963; R.C.M. 1947, 36-202(1).

Cross-References

Rights and obligations of minors, Title 41, ch. 1.

40-3-103. Use of shall and may. As used in this chapter "shall" is mandatory and "may" is permissive.

History: En. Sec. 2, Ch. 238, L. 1963; R.C.M. 1947, 36-202(2).

40-3-104. Application. The provisions of this chapter shall be applicable only in counties in which the district court determines that the social conditions in the county and the number of domestic relations cases in the courts render the procedures herein provided necessary to the full and proper consideration of such cases and the effectuation of the purposes of this chapter. Such determination shall be made annually in the month of January or July by the judge of the district court in counties having only one such judge and by a majority of the judges of the district court in counties having more than one such judge.

History: En. Sec. 2, Ch. 238, L. 1963; R.C.M. 1947, 36-202(3).

Cross-References

District Court — powers respecting conduct of business, 3-1-111.

District Court — means to carry jurisdiction into effect, 3-1-113.

40-3-105 through 40-3-110 reserved.

40-3-111. Conciliation court — jurisdiction. (1) Each district court shall exercise the jurisdiction conferred by this chapter and while sitting in the exercise of such jurisdiction shall be known and referred to as the "conciliation court".

(2) Whenever any controversy exists between the spouses which may, unless a reconciliation is achieved, result in the dissolution or annulment of

the marriage or in the disruption of the household and there is any minor child of the spouses or of either of them whose welfare might be affected thereby, the conciliation court shall have jurisdiction over the controversy and over the parties thereto and all persons having any relation to the controversy as further provided in this chapter.

(3) Whenever application is made to the conciliation court for conciliation proceedings in respect to a controversy between spouses or a contested action for dissolution, annulment, or separate maintenance but there is no minor child whose welfare may be affected by the results of the controversy and it appears to the court that reconciliation of the spouses or amicable adjustment of the controversy can probably be achieved and that the work of the court in cases involving children will not be seriously impeded by acceptance of the case, the court may accept and dispose of the case in the same manner as similar cases involving the welfare of children are disposed of. In the event of such application and acceptance, the court shall have the same jurisdiction over the controversy and the parties thereto or having any relation thereto that it has under this chapter in similar cases involving the welfare of children.

(4) The jurisdiction of the conciliation courts and the powers thereof shall be as provided in the constitution of Montana, Title 3, chapter 5, parts 1 through 4, and acts amendatory and relating thereto, including the right of disqualification of any judge of the conciliation court.

History: (1), (4)En. Sec. 3, Ch. 238, L. 1963; amd. Sec. 16, Ch. 100, L. 1973; Sec. 36-203, R.C.M. 1947; (2), (3)En. Sec. 4, Ch. 238, L. 1963; amd. Sec. 2, Ch. 33, L. 1977; Sec. 36-204, R.C.M. 1947; R.C.M. 1947, 36-203(1), (8), 36-204(1), (13).

Cross-References

District Court — jurisdiction, Art. VII, sec. 4, Mont. Const.

Means to carry jurisdiction into effect, 3-1-113.

Child abuse, neglect, and dependency — jurisdiction and venue, 41-3-103.

Youth Court — jurisdiction, Title 41, ch. 5, part 2.

40-3-112. Selection of judges. In counties having more than one judge of the district court, the judges of such court shall annually, in the month of January or July, designate at least one judge to hear all cases under this chapter. The judge or judges so designated shall hold as many sessions of the conciliation court in each week as are necessary for the prompt disposition of the business before the court.

History: En. Sec. 3, Ch. 238, L. 1963; amd. Sec. 16, Ch. 100, L. 1973; R.C.M. 1947, 36-203(2).

40-3-113. Transfer of cases. Another district judge may be called in by the judge of the conciliation court to act as judge of the conciliation court during any period when the judge of the conciliation court is on vacation, absent, or for any reason unable to perform his duties. Any judge so appointed shall have all of the powers and authority of a judge of the conciliation court in cases under this chapter.

History: En. Sec. 3, Ch. 238, L. 1963; amd. Sec. 16, Ch. 100, L. 1973; R.C.M. 1947, 36-203(3).

Cross-References

Transfer when judge unable to hear motion or return of order, 25-4-102.

40-3-114. Budget. The provisions of the county budget system, Title 7, chapter 6, part 23, shall, except as provided by 40-3-125(3), be applicable to expenditures for the court of conciliation.

History: En. Sec. 3, Ch. 238, L. 1963; amd. Sec. 16, Ch. 100, L. 1973; R.C.M. 1947, 36-203(4); amd. Sec. 3, Ch. 405, L. 1979.

40-3-115. Probation officers' duties. The probation officer in every county shall give such assistance to the conciliation court as the court may request to carry out the purposes of this chapter, and to that end the probation officer shall, upon request and with the consent of both parties, make investigations and reports as requested and, in cases pursuant to this chapter, shall exercise all the powers and perform all the duties granted or imposed by the laws of this state relating to probation or to probation officers.

History: En. Sec. 3, Ch. 238, L. 1963; amd. Sec. 16, Ch. 100, L. 1973; R.C.M. 1947, 36-203(6).

Cross-References

Probation officers — appointment and supervision, 41-5-201, 41-5-701.

Powers and duties of probation officers, 41-5-401, 41-5-703.

Qualifications of probation officers, 41-5-702.

40-3-116. Privacy of hearings. (1) All district court hearings or conferences in proceedings under this chapter shall be held in private, and the court shall exclude all persons except the officers of the court, the parties, their counsel, and witnesses. Conferences may be held with each party and his counsel separately. In the discretion of the judge or counselor conducting the conference or hearing, all counsel may be excluded. All communications, verbal or written, from parties to the judge or counselor in a proceeding under this chapter shall be deemed made to such officer in official confidence.

(2) The files of the conciliation court shall be closed. The petition, supporting affidavit, reconciliation agreement, and any court order made in the matter may be opened to inspection by any party or his counsel upon the written authority of the judge of the conciliation court.

History: En. Sec. 3, Ch. 238, L. 1963; amd. Sec. 16, Ch. 100, L. 1973; R.C.M. 1947, 36-203(7).

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Records of officers open to public inspection, 2-6-104.

Sittings of court — when private, 3-1-313.

40-3-117 through 40-3-120 reserved.

40-3-121. Filing of petition. Prior to the filing of any action for dissolution, annulment, or separate maintenance, either spouse or both spouses may file in the conciliation court a petition invoking the jurisdiction of the court for the purpose of preserving the marriage by effecting a reconciliation between the parties or for amicable settlement of the controversy between the spouses so as to avoid further litigation over the issue involved.

History: En. Sec. 4, Ch. 238, L. 1963; amd. Sec. 2, Ch. 33, L. 1977; R.C.M. 1947, 36-204(2).

40-3-122. Petition form and contents. (1) The petition shall be captioned substantially as follows:

District Court of the State of Montana
For the County of ....

Upon the petition of . . . . Petitioner	Petition for Conciliation (Under the Conciliation Court Law)

And concerning
. . . . and
. . . .
Respondents.

To the Conciliation Court:

(2) The petition shall:

(a) allege that a controversy exists between the spouses and request the aid of the court to effect a reconciliation or an amicable settlement of the controversy;

(b) state the name and age of each minor child whose welfare may be affected by the controversy;

(c) state the name and address of the petitioner or the names and addresses of the petitioners;

(d) if the petition is presented by one spouse only, name the other spouse as a respondent and state the address of that spouse;

(e) also name as a respondent any other person who has any relation to the controversy and state the address of the person, if known to the petitioner;

(f) state such other information as the court may by rule require.

(3) The clerk of the court shall provide, at the expense of the county, blank forms for petitions for filing pursuant to this chapter. The probation officers of the county and the attaches and employees of the conciliation court shall assist any person in the preparation and presentation of any such petition when any person requests such assistance. All public officers in each county shall refer to the conciliation court all petitions and complaints made to them in respect to controversies within the jurisdiction of the conciliation court.

History: En. Sec. 4, Ch. 238, L. 1963; amd. Sec. 2, Ch. 33, L. 1977; R.C.M. 1947, 36-204(3) thru (5).

40-3-123. No fees. No fee may be charged by any officer for filing the petition nor may any fee be charged by any officer for the performance of any duty pursuant to this chapter.

History: En. Sec. 4, Ch. 238, L. 1963; amd. Sec. 2, Ch. 33, L. 1977; R.C.M. 1947, 36-204(6).

Cross-References

Fees of Clerk of District Court, 25-1-201.

40-3-124. Manner of conciliation. (1) The judge of the conciliation court may hear all matters invoked under this chapter, or he may refer such matters to a pastor or director of any religious denomination to which the parties may belong, psychiatrist, physician, attorney, social worker, or other person who is competent and qualified by training and experience in personal counseling. Such person shall be referred to herein as the conciliation counselor.

(2) The conciliation counselor shall:

(a) hold conciliation conferences with parties to, and hearings in, proceedings under this chapter and make recommendations concerning such proceedings to the judge of the conciliation court;

(b) cause such reports to be made, such statistics to be compiled, and such records to be kept as the judge of the conciliation court may direct.

History: **En. Sec. 3, Ch. 238, L. 1963; amd. Sec. 16, Ch. 100, L. 1973; R.C.M. 1947, 36-203(5).**

40-3-125. Hearings. (1) The court shall fix a reasonable time and place for hearing on the petition and shall cause such notice of the filing of the petition and the time and place of the hearing as it considers necessary to be given to the respondents. The court may, when it considers it necessary, issue a citation to any respondent requiring him to appear at the time and place stated in the citation and may require the attendance of witnesses as in other civil cases.

(2) For the purpose of conducting hearings pursuant to this chapter, the conciliation court may be convened at any time and place within the district and the hearing may be had in chambers or otherwise, except that the time and place for hearing may not be different from the time and place provided by law for the trial of civil actions if any party, prior to the hearing, objects to any different time or place.

(3) The hearing shall be conducted informally as a conference or series of conferences to effect a reconciliation of the spouses or an amicable adjustment or settlement of the issues of the controversy. To facilitate and promote the purposes of this chapter, the court may, with the consent of both of the parties to the proceeding, recommend or invoke the aid of physicians, psychiatrists, other specialists or scientific experts, or the pastor or director of any religious denomination to which the parties may belong. Such aid, however, shall not be at the expense of the court or of the county, unless the county commissioners of the county specifically provide and authorize such aid.

History: **En. Sec. 4, Ch. 238, L. 1963; amd. Sec. 2, Ch. 33, L. 1977; R.C.M. 1947, 36-204(7) thru (9).**

Cross-References

General rules regarding procedure, Title 3, ch. 1, part 3.

Sittings of court — when private, 3-1-313.

Terms and location of District Court, 3-5-401.

40-3-126. Orders — reconciliation agreement. (1) At or after hearing, the court may make such orders in respect to the conduct of the spouses and the subject matter of the controversy as the court considers necessary to preserve the marriage or to implement the reconciliation of the spouses, but in no event may such orders be effective for more than 30 days from the hearing of the petition, unless the parties mutually consent to a continuation of such time.

(2) Any reconciliation agreement between the parties may be reduced to writing and, with the consent of the parties, a court order may be made requiring the parties to comply fully therewith.

History: **En. Sec. 4, Ch. 238, L. 1963; amd. Sec. 2, Ch. 33, L. 1977; R.C.M. 1947, 36-204(10).**

40-3-127. Dissolution, declaration of invalidity, or separate maintenance proceeding — effect. (1) During a period beginning upon the filing of the petition for conciliation and continuing until 30 days after the hearing of the petition for conciliation, neither spouse shall file any action for dissolution, declaration of invalidity, or separate maintenance.

(2) If after the expiration of such period the controversy between the spouses has not been terminated, either spouse may institute proceedings for dissolution, declaration of invalidity, or separate maintenance. The pendency of a dissolution, declaration of invalidity, or separate maintenance action may not operate as a bar to the instituting of proceedings for conciliation under this chapter.

(3) Whenever any action for dissolution, declaration of invalidity, or separate maintenance is filed in the district court and it appears to the court at any time during the pendency of the action that there is any minor child of the spouses or of either of them whose welfare may be adversely affected by the dissolution or declaration of invalidity of the marriage or the disruption of the household and that there appears to be some reasonable possibility of a reconciliation being effected, the case may be transferred to the conciliation court for proceedings for reconciliation of the spouses or amicable settlement of issues in controversy, in accordance with the provisions of this chapter.

History: **En. Sec. 4, Ch. 238, L. 1963; amd. Sec. 2, Ch. 33, L. 1977; R.C.M. 1947, 36-204(11), (12); amd. Sec. 169, Ch. 575, L. 1981.**

Cross-References

Declaration of invalidity, 40-1-402.

Dissolution of marriage — legal separation, 40-4-104.

Maintenance, 40-4-203.

CHAPTER 4

TERMINATION OF MARRIAGE, CHILD CUSTODY, SUPPORT

Part 1 — Separation—Dissolution of Marriage

40-4-101. Purposes.
40-4-102. Uniformity of application and construction.
40-4-103. Application of the Montana Rules of Civil Procedure.
40-4-104. Dissolution of marriage — legal separation.
40-4-105. Procedure — commencement — pleadings — abolition of existing defenses.
40-4-106. Renumbered 40-4-121 by Code Commissioner, 1985.
40-4-107. Irretrievable breakdown.
40-4-108. Decree.
40-4-109. Independence of provisions of decree or temporary order.
40-4-110. Costs — attorney's fees.
40-4-111 through 40-4-120 reserved.
40-4-121. Temporary order or temporary injunction.
40-4-122. Forms — distribution — filing.
40-4-123. Jurisdiction and venue.
40-4-124. Review or removal — district court.
40-4-125. Registration of orders.
40-4-126 through 40-4-129 reserved.
40-4-130. Summary dissolution — conditions necessary at commencement of proceedings.
40-4-131. Joint petition — filing — form — contents.
40-4-132. Revocation of joint petition — termination of proceeding — notice — copy to other party.

40-4-133. Hearing and final judgment — entry — effect.
40-4-134. Final judgment as final adjudication of rights and obligations.
40-4-135. Actions to set aside final judgment.
40-4-136. Brochure to describe proceedings — availability — distribution — contents and form.

Part 2 — Support, Custody, Visitation, and Related Provisions

40-4-201. Separation agreement.
40-4-202. Division of property.
40-4-203. Maintenance.
40-4-204. Child support — orders to address health insurance — withholding of child support.
40-4-205. Representation of child.
40-4-206. Payment of maintenance or support to court — handling fee of clerk.
40-4-207. Assignments.
40-4-208. Modification and termination of provisions for maintenance, support, and property disposition.
40-4-209. Security or guaranty to secure support.
40-4-210. Child support jurisdiction — nonresident individual.
40-4-211. Child custody jurisdiction — commencement of proceedings.
40-4-212. Best interest of child.
40-4-213. Temporary orders.
40-4-214. Interviews.
40-4-215. Investigations and reports.
40-4-216. Hearings.
40-4-217. Visitation.
40-4-218. Judicial supervision.
40-4-219. Modification.
40-4-220. Affidavit practice.
40-4-221. Determination of custody upon death of custodial parent.
40-4-222. Declaration of legislative intent — joint custody.
40-4-223. Award of joint or separate custody.
40-4-224. Joint custody — modification — consultation with professionals.
40-4-225. Access to records by noncustodial parent.

Part 3 — Family Law Mediation

40-4-301. Family law mediation — exception.
40-4-302. Mediation proceeding — tolling of statute of limitations.
40-4-303. Proceedings — records — confidentiality.
40-4-304. Mediator recommendation.
40-4-305. Mediation agreement.
40-4-306. Mediator list.
40-4-307. Mediator qualifications.
40-4-308. Court to establish fees.

Chapter Cross-References

Proper place of trial — county in which petitioner has resided 90 days preceding the commencement of the action, 25-2-118.

Part 1

Separation — Dissolution of Marriage

Part Cross-References

Court proceedings may be private in divorce action, 3-1-313.

When divorce terminates right of interment, 35-21-420.

Displaced Homemaker Program, Title 39, ch. 7, part 3.

40-4-101. Purposes. This chapter shall be liberally construed and applied to promote its underlying purposes, which are to:

(1) strengthen and preserve the integrity of marriage and safeguard family relationships;

(2) promote the amicable settlement of disputes that have arisen between parties to a marriage;

(3) mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage;

(4) make reasonable provision for spouse and minor children during and after litigation; and

(5) make the law of legal dissolution of marriage effective for dealing with the realities of matrimonial experience by making irretrievable breakdown of the marriage relationship the sole basis for its dissolution.

History: En. 48-302 by Sec. 2, Ch. 536, L. 1975; R.C.M. 1947, 48-302(part).

Cross-References

Montana Conciliation Law, Title 40, ch. 3, part 1.

40-4-102. Uniformity of application and construction. This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states which enact it.

History: En. 48-303 by Sec. 3, Ch. 536, L. 1975; R.C.M. 1947, 48-303.

40-4-103. Application of the Montana Rules of Civil Procedure. (1) Except for proceedings coming under the Uniform Child Custody Jurisdiction Act, the Montana Rules of Civil Procedure apply to all proceedings under this chapter, except as otherwise provided in this chapter.

(2) A proceeding for dissolution of marriage or legal separation shall be entitled, "In re the Marriage of .... and ....". A custody or support proceeding shall be entitled, "In re the (custody) (support) of ....".

(3) The initial pleading in all proceedings under this chapter shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings, and all pleadings in other matters under this chapter, shall be denominated as provided in the Montana Rules of Civil Procedure.

(4) In this chapter, "decree" includes "judgment".

(5) A decree of dissolution or of legal separation, if made, shall not be awarded to one of the parties but shall provide that it affects the status previously existing between the parties in the manner decreed.

History: En. 48-315 by Sec. 15, Ch. 536, L. 1975; amd. Sec. 26, Ch. 537, L. 1977; R.C.M. 1947, 48-315(part).

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

Application of the Montana Rules of Civil Procedure, 40-1-105.

Uniform Child Custody Jurisdiction Act, Title 40, ch. 7, part 1.

40-4-104. Dissolution of marriage — legal separation. (1) The district court shall enter a decree of dissolution of marriage if:

(a) the court finds that one of the parties, at the time the action was commenced, was domiciled in this state or was stationed in this state while a member of the armed services and that the domicile or military presence has been maintained for 90 days next preceding the making of the findings;

(b) the court finds that the marriage is irretrievably broken, which findings shall be supported by evidence:

(i) that the parties have lived separate and apart for a period of more than 180 days next preceding the commencement of this proceeding; or

(ii) that there is serious marital discord which adversely affects the attitude of one or both of the parties towards the marriage;

(c) the court finds that the conciliation provisions of the Montana Conciliation Law and of 40-4-107 either do not apply or have been met; and

(d) to the extent it has jurisdiction to do so, the court has considered, approved, or made provision for child custody, the support of any child entitled to support, the maintenance of either spouse, and the disposition of property.

(2) If a party requests a decree of legal separation rather than a decree of dissolution of marriage, the court shall grant the decree in that form unless the other party objects.

History: En. 48-316 by Sec. 16, Ch. 536, L. 1975; R.C.M. 1947, 48-316; amd. Sec. 1, Ch. 392, L. 1985.

Cross-References

Residence — rules for determining, 1-1-215.

Proper place of trial — county in which petitioner has resided 90 days preceding commencement of action, 25-2-118.

Conciliation proceedings — effect on other proceedings, 40-3-127.

Support, custody, visitation, and related provisions, Title 40, ch. 4, part 2.

40-4-105. Procedure — commencement — pleadings — abolition of existing defenses. (1) The verified petition in a proceeding for dissolution of marriage or legal separation shall allege that the marriage is irretrievably broken and shall set forth:

(a) the age, occupation, and residence of each party and his length of residence in this state;

(b) the date of the marriage and the place at which it was registered;

(c) that the jurisdictional requirements of 40-4-104 exist and that the marriage is irretrievably broken in that either:

(i) the parties have lived separate and apart for a period of more than 180 days next preceding the commencement of this proceeding; or

(ii) there is serious marital discord which adversely affects the attitude of one or both of the parties towards the marriage, and there is no reasonable prospect of reconciliation;

(d) the names, ages, and addresses of all living children of the marriage and whether the wife is pregnant;

(e) any arrangements as to support, custody, and visitation of the children and maintenance of a spouse; and

(f) the relief sought.

(2) Either or both parties to the marriage may initiate the proceeding.

(3) If a proceeding is commenced by one of the parties, the other party must be served in the manner provided by the Montana Rules of Civil Procedure and may within 20 days after the date of service file a verified response. No decree may be entered until 20 days after the date of service.

(4) Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

(5) The court may join additional parties proper for the exercise of its authority to implement this chapter.

History: En. 48-317 by Sec. 17, Ch. 536, L. 1975; amd. Sec. 10, Ch. 33, L. 1977; R.C.M. 1947, 48-317.

Cross-References

Residence — rules for determining, 1-1-215.

Court proceeding may be private in divorce action, 3-1-313.

Montana Rules of Civil Procedure, Title 25, ch. 20.

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20.)

Application of Montana Rules of Civil Procedure, 40-1-105.

Alteration of legal relation by contract — separation agreement, 40-2-303.

Montana Conciliation Law, Title 40, ch. 3, part 1.

Recordation of marriage, 50-15-301.

40-4-106. Renumbered 40-4-121 by Code Commissioner, 1985.

40-4-107. Irretrievable breakdown. (1) If both of the parties by petition or otherwise have stated under oath or affirmation that the marriage is irretrievably broken or one of the parties has so stated and the other has not denied it, the court, after hearing, shall make a finding whether the marriage is irretrievably broken.

(2) If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the court shall consider all relevant factors, including the circumstances that gave rise to filing the petition and the prospect of reconciliation, and shall:

(a) make a finding whether the marriage is irretrievably broken; or

(b) continue the matter for further hearing not fewer than 30 or more than 60 days later or as soon thereafter as the matter may be reached on the court's calendar and may suggest to the parties that they seek counseling. The court at the request of either party shall, or on its own motion may, order a conciliation conference. At the adjourned hearing the court shall make a finding whether the marriage is irretrievably broken.

(3) A finding of irretrievable breakdown is a determination that there is no reasonable prospect of reconciliation.

(4) Nothing in this section shall be interpreted to affect the provisions of chapter 3 of this title, known as the Montana Conciliation Law.

History: En. 48-319 by Sec. 19, Ch. 536, L. 1975; R.C.M. 1947, 48-319.

Cross-References

Cause of action for alienation of affections abolished, 27-1-601.

Conciliation court — jurisdiction, 40-3-111.

Privacy of hearings, 40-3-116.

Manner of conciliation, 40-3-124.

40-4-108. Decree. (1) A decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal. An appeal from the decree of dissolution that does not challenge the finding that the marriage is irretrievably broken does not delay the finality of that provision of the decree which dissolves the marriage beyond the time for appealing from that provision, and either of the parties may remarry pending appeal.

(2) No earlier than 6 months after entry of a decree of legal separation, the court on motion of either party shall convert the decree to a decree of dissolution of marriage.

(3) The clerk of court shall give notice of the entry of a decree of dissolution or legal separation:

(a) if the marriage is registered in this state, to the clerk of the district court of the county where the marriage is registered who shall enter the fact of dissolution or separation in the book in which the marriage license and certificate are recorded; or

(b) if the marriage is registered in another jurisdiction, to the appropriate official of that jurisdiction, with the request that he enter the fact of dissolution in the appropriate record.

(4) Upon request by a wife whose marriage is dissolved or declared invalid, the court shall order her maiden name or a former name restored.

History: **En. 48-328 by Sec. 28, Ch. 536, L. 1975; amd. Sec. 1, Ch. 174, L. 1977; R.C.M. 1947, 48-328.**

Cross-References

Clerk of Court — general duties, 3-5-501.

Montana Rules of Appellate Procedure, Title 25, ch. 21.

Change of name, Title 27, ch. 31.

When divorce terminates right of interment, 35-21-420.

Decree of dissolution — vital statistics, 50-15-302.

Revocation of provision for spouse in will by divorce or annulment, 72-2-528.

40-4-109. Independence of provisions of decree or temporary order. If a party fails to comply with a provision of a decree or temporary order or injunction, the obligation of the other party to make payments for support or maintenance or to permit visitation is not suspended but he may move the court to grant an appropriate order.

History: **En. 48-329 by Sec. 29, Ch. 536, L. 1975; R.C.M. 1947, 48-329.**

Cross-References

Maintenance, 40-4-203.

Child support, 40-4-204.

Visitation, 40-4-217.

40-4-110. Costs — attorney's fees. The court from time to time, after considering the financial resources of both parties, may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under chapters 1 and 4 of this title and for attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The court may order that the amount be paid directly to the attorney, who may enforce the order in his name.

History: **En. 48-327 by Sec. 27, Ch. 536, L. 1975; R.C.M. 1947, 48-327.**

Cross-References

Allowable costs, Title 25, ch. 10, part 2.

Attorneys' fees, Title 25, ch. 10, part 3.

Representation of child, 40-4-205.

Modification, 40-4-219.

40-4-111 through 40-4-120 reserved.

40-4-121. Temporary order or temporary injunction. (1) In a proceeding for dissolution of marriage or for legal separation or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion must be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(2) As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary injunction for any of the following relief:

(a) restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life and, if so restrained, requiring the person to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(b) enjoining a party from molesting or disturbing the peace of the other party or of any family member or from stalking, as defined in 45-5-220;

(c) excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

(d) enjoining a party from removing a child from the jurisdiction of the court;

(e) ordering a party to complete counseling, including alcohol or chemical dependency counseling or treatment; and

(f) providing other injunctive relief proper in the circumstances.

(3) A person may seek the relief provided for in subsection (2) without filing a petition under this part for a dissolution of marriage or legal separation by filing a verified petition:

(a) (i) alleging physical abuse, harm, or bodily injury against the petitioner by a family member or partner or the threat of physical abuse, harm, or bodily injury against the petitioner by a family member or partner that causes the petitioner to reasonably believe that the offender has the present ability to execute the threat; or

(ii) alleging a violation of 45-5-220; and

(b) requesting relief under Title 27, chapter 19, part 3. Any temporary injunction entered under this subsection must be for a fixed period of time, not to exceed 1 year, and may be modified as provided in Title 27, chapter 19, part 4, and 40-4-208, as appropriate. Persons who may request relief under this subsection include family members, partners, and persons alleging a violation of 45-5-220.

(4) The court may issue a temporary restraining order for a period not to exceed 20 days without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed.

(5) A response may be filed within 20 days after service of notice of motion or at the time specified in the temporary restraining order.

(6) At the time of the hearing, the court shall determine whether good cause exists for the injunction to continue for 1 year.

(7) If the court determines, on the basis of a party's history of violence and the testimony presented at the hearing or on the basis of credible evidence that a party has violated 45-5-220, that the other party needs permanent protection or may otherwise suffer permanent injury or harm, the court may order that the injunction be effective permanently.

(8) A permanent injunction may be issued by a district court with jurisdiction over the parties to a dissolution proceeding upon presentation of

evidence of a party's history of violence showing that the other party may suffer permanent injury or harm if a permanent injunction is not issued. A permanent injunction may also be issued enjoining a party from stalking upon presentation of credible evidence that the party has violated 45-5-220 if the court determines that the stalked party needs permanent protection.

(9) Except when the alleged conduct to be restrained is a violation of 45-5-220, restraining orders issued under this section may restrain the petitioner's actions only if the court finds that the petitioner, in addition to the respondent, has engaged in abusive or assaultive behavior as described by subsection (3)(a).

(10) On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court may issue a temporary injunction and an order for temporary maintenance or support in amounts and on terms just and proper in the circumstance.

(11) A temporary order or injunction or permanent injunction:

(a) may be revoked or modified on a showing by affidavit of the facts necessary to revocation or modification of a final decree under 40-4-208 or order under Title 27, chapter 19, part 3, as appropriate;

(b) terminates upon order of the court or when the petition is voluntarily dismissed; and

(c) when issued under this section must conspicuously bear the following: "Violation of this order is a criminal offense under 45-5-220 or 45-5-626."

(12) When the petitioner has fled the parties' residence, notice of petitioner's new residence must be withheld except by order of the court for good cause shown.

(13) As used in this section, the following definitions apply:

(a) "Bodily injury" means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.

(b) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.

(c) "Partner" means spouses, former spouses, and persons who have been or are currently in a dating or ongoing intimate relationship with a person of the opposite sex.

History: En. 48-318 by Sec. 18, Ch. 536, L. 1975; R.C.M. 1947, 48-318; amd. Sec. 1, Ch. 180, L. 1981; amd. Sec. 4, Ch. 526, L. 1985; Sec. 40-4-106, MCA 1983; redes. 40-4-121 by Code Commissioner, 1985; amd. Sec. 1, Ch. 259, L. 1991; amd. Sec. 2, Ch. 292, L. 1993; amd. Sec. 1, Ch. 425, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 292 in (2)(b), at end, inserted reference to offense of stalking; inserted (3)(a)(ii) concerning alleged violation of 45-5-220; in (3)(b), at end, inserted reference to persons alleging violation of 45-5-220; in (11)(c) inserted reference to 45-5-220; and made minor changes in style. Amendment effective April 9, 1993.

Chapter 425 in (2)(b), at end, substituted "family member" for "child"; inserted (2)(e) authorizing court to require counseling; in (3)(a)(i), in two places after "by a family", deleted "or household" and after "member" inserted "or partner"; in (3)(b), near beginning of second sentence before "injunction", substituted "temporary" for "preliminary" and at end inserted "as appropriate" and at end of last sentence substituted "family members, partners" for "spouses, former spouses, and persons cohabiting or who have cohabited with the other party within 1 year immediately preceding the filing of the petition"; inserted (6) requiring court to determine if cause exists to continue injunction; inserted (7) and (8) authorizing court to issue permanent injunction; inserted (9) concerning restraining of petitioner; in (11), at end, inserted "or permanent injunction"; deleted former (11)(a) that read: "does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding"; in (11)(a), near beginning after "modified", deleted "before final decree" and at end inserted "or order under Title 27, chapter 19, part 3, as appropriate"; in (11)(b), after "court or", deleted "when a final decree is entered or" and after "petition" deleted "for dissolution or legal separation"; inserted (13) defining bodily injury, family member, and partner; and made minor changes in style.

Cross-References

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20).

How preventive relief is given, 27-1-403.

When preliminary injunction may be granted, 27-19-201.

Procedure for obtaining preliminary injunction, Title 27, ch. 19, part 3.

Temporary custody orders, 40-4-213.

Criminal offense of domestic abuse, 45-5-206.

Sexual intercourse without consent, 45-5-503.

Endangering the welfare of children, 45-5-622.

Sexual abuse of children, 45-5-625.

Circumstances in which a peace officer may make arrests, 46-6-210.

Written report when no arrest made in domestic violence situation, 46-6-601.

Notice of rights to victim upon arrest in domestic violence situation, 46-6-602.

Bringing arrested person before a court, 46-7-101.

Bail — exception for domestic abuse, 46-9-302.

Battered spouses grant program, Title 52, ch. 6, part 1.

40-4-122. Forms — distribution — filing. The attorney general shall prepare uniform sample instructions and petition and order forms necessary for allowing an applicant to obtain a temporary restraining order under 40-4-121 and uniform sample affidavits and orders of inability to pay filing fees or other costs. The attorney general shall distribute samples of the restraining order and the inability-to-pay-filing-fees order forms to the clerk of the district court in each county and to justice, city, and municipal courts. The clerk of the district court, justices of the peace, city, and municipal courts shall make forms available to the public at no charge.

History: En. Sec. 5, Ch. 526, L. 1985; amd. Sec. 2, Ch. 208, L. 1989.

40-4-123. Jurisdiction and venue. (1) District courts, municipal courts, justices' courts, and city courts have concurrent jurisdiction to hear and issue orders under 40-4-121(3).

(2) The municipal judge, justice of the peace, or city court judge shall on motion suspend all further proceedings in the action and certify the pleading and any orders to the clerk of the district court of the county where the action was begun if an action for declaration of invalidity of a marriage, legal separation, or dissolution of marriage, or child custody is pending between the parties. From the time of the certification of such pleadings and any orders to the clerk, the district court has the same jurisdiction over the action as if it had been commenced therein.

(3) An action brought under 40-4-121(3) may be tried in the county in which either party resides or in which the physical abuse was committed.

(4) The right to petition for relief may not be denied because the plaintiff has vacated the residence or household to avoid abuse.

History: En. Sec. 6, Ch. 526, L. 1985; amd. Sec. 3, Ch. 208, L. 1989.

Cross-References

Montana Justice and City Court Rules of Civil Procedure, M.J.C.C.R.Civ.P., Title 25, ch. 23.

Appeal to District Court from Justice's Court, Rule 24, M.J.C.C.R.Civ.P. (see Title 25, ch. 23).

Procedure in Municipal Courts, Title 25, ch. 30.

Procedure in Justices' Courts, Title 25, ch. 31.

Declaration of invalidity, 40-1-402.

Dissolution of marriage — legal separation, 40-4-104.

Child custody, 40-4-211 through 40-4-225.

Violation of protective order a misdemeanor, 45-5-626.

40-4-124. Review or removal — district court. (1) An order issued by a municipal court, justice court, or city court pursuant to 40-4-121(3) is immediately reviewable by the judge of the district court at chambers upon the filing of a notice of appeal. The district judge may affirm, dissolve, or modify an order of a municipal court, justice court, or city court made pursuant to 40-4-121(3).

(2) Any case in which an order has been issued by a municipal court, justice court, or city court pursuant to 40-4-121(3) may be removed to district court upon filing of a notice of removal.

History: En. Sec. 7, Ch. 526, L. 1985; amd. Sec. 4, Ch. 208, L. 1989.

Cross-References

Appeal to District Court from Justice's Court, Rule 24, M.J.C.C.R.Civ.P. (see Title 25, ch. 23).

40-4-125. Registration of orders. (1) The clerk of court, justice of the peace, municipal court judge, or city court judge shall, within 24 hours of receiving proof of service of an order under 40-4-121, mail a copy of the order or any extension, modification, or termination thereof along with a copy of the proof of service to the appropriate law enforcement agencies designated in the order.

(2) Law enforcement agencies shall establish procedures, using an existing system for warrant verification, to ensure that peace officers at the scene of an alleged violation of a protective order are informed of the existence and terms of such order.

History: En. Sec. 8, Ch. 526, L. 1985; amd. Sec. 5, Ch. 208, L. 1989.

Cross-References

Violation of protective order a misdemeanor, 45-5-626.

40-4-126 through 40-4-129 reserved.

40-4-130. Summary dissolution — conditions necessary at commencement of proceedings. A marriage may be dissolved by the summary dissolution procedure specified in 40-4-130 through 40-4-136 if all of the following conditions exist on the date the proceeding is commenced:

(1) Each party has met the requirements of 40-4-104 with regard to dissolution of marriage.

(2) Irreconcilable differences have caused the irretrievable breakdown of the marriage, and both parties agree that the marriage should be dissolved.

(3) There are no children from the relationship born before or during the marriage or adopted by the parties during the marriage, and the wife is not pregnant.

(4) (a) Except as provided in subsection (4)(b), neither party has any interest in real property.

(b) The limitation of subsection (4)(a) does not apply to the lease of a residence occupied by either party if the lease does not include an option to purchase and if it terminates within 1 year from the date of the filing of the petition.

(5) There are no unpaid obligations in excess of $4,000 incurred by either or both of the parties after the date of their marriage, excluding the amount of any unpaid obligations with respect to a motor vehicle with a rated carrying load in persons and property of 1 ton or less.

(6) The total fair market value of property assets, excluding all encumbrances and motor vehicles with a rated carrying load in persons and property of 1 ton or less, is less than $13,000, and neither party has separate property assets in excess of $13,000, excluding all encumbrances and motor vehicles with a rated carrying load in persons and property of 1 ton or less.

(7) The parties have executed an agreement setting forth the division of assets and the assumption of liabilities and have duly executed any documents, title certificates, bills of sale, or other evidence of transfer necessary to effectuate the agreement.

(8) The parties waive any right to maintenance.

(9) The parties, upon entry of final judgment of dissolution of marriage, irrevocably waive their respective rights to appeal the terms of the dissolution and their rights to move for a new trial on the dissolution.

(10) The parties have read and state that they understand the contents of the summary dissolution brochure provided for in 40-4-136.

(11) The parties desire that the court dissolve the marriage.

History: En. Sec. 1, Ch. 795, L. 1991.

40-4-131. Joint petition — filing — form — contents. (1) A proceeding for summary dissolution of marriage is commenced by filing in the district court a joint petition in the form prescribed by the court.

(2) The petition must:

(a) be signed under oath by both parties;

(b) state that, as of the date of the filing of the joint petition, each condition set forth in 40-4-130 has been met;

(c) state the mailing address of both parties; and

(d) state whether or not the wife elects to have her maiden or former name restored and, if so, state the name to be restored.

History: En. Sec. 2, Ch. 795, L. 1991.

40-4-132. Revocation of joint petition — termination of proceeding — notice — copy to other party. (1) At any time prior to the entry of final judgment, either party to the marriage may revoke the joint petition and thereby terminate the summary dissolution proceeding filed pursuant to 40-4-130 through 40-4-136.

(2) The revocation is effected by filing with the clerk of the court in which the proceeding was commenced a notice of revocation in the form and content prescribed by the district court.

(3) The revoking party shall send a copy of the notice of revocation to the last-known address of the other party by first-class mail, postage prepaid.

History: En. Sec. 3, Ch. 795, L. 1991.

40-4-133. Hearing and final judgment — entry — effect. After 20 days from the date of the filing of the joint petition for summary dissolution, the district court shall hold a hearing at which both parties must be present, and if the court determines that the conditions in 40-4-130 exist, the court shall enter the final judgment dissolving the marriage. Entry of final judgment restores each party to the status of a single person and permits either to marry.

History: En. Sec. 4, Ch. 795, L. 1991.

40-4-134. Final judgment as final adjudication of rights and obligations. Except as provided in 40-4-135, entry of final judgment constitutes a final adjudication of the rights and obligations of the parties with respect to the status of the marriage and property rights and constitutes a waiver of their respective rights to maintenance, rights to appeal the terms of the dissolution, and rights to a new trial.

History: En. Sec. 5, Ch. 795, L. 1991.

40-4-135. Actions to set aside final judgment. (1) A final judgment made pursuant to 40-4-133 does not prejudice or bar the rights of either party to institute an action to set aside the final judgment for fraud, duress, accident, mistake, or other grounds recognized at law or in equity or to make a motion pursuant to the Montana Rules of Civil Procedure.

(2) The district court shall set aside a final judgment made pursuant to 40-4-133 regarding all matters except the status of the marriage upon proof that the parties did not meet the requirements of 40-4-130 on the date the petition was filed.

History: En. Sec. 6, Ch. 795, L. 1991.

40-4-136. Brochure to describe proceedings — availability — distribution — contents and form. (1) Each district court shall make available a brochure, prepared and distributed by the attorney general, describing the requirements, nature, and effect of proceedings under 40-4-130 through 40-4-136.

(2) (a) In nontechnical language, the brochure must:

(i) state that it is in the best interests of the parties to consult an attorney regarding the dissolution of their marriage. The services of an attorney may be obtained through lawyer referral services, group or prepaid legal services, or legal aid organizations.

(ii) state that the brochure is not intended as a guide for self-representation in proceedings under 40-4-130 through 40-4-136 and should not be relied upon exclusively by the parties;

(iii) provide a concise summary of the provisions of 40-4-104 and 40-4-130 through 40-4-136;

(iv) describe the nature of services of the conciliation court, if available;

(v) state that under the provisions of 40-4-130 through 40-4-136, neither party to the marriage may obtain maintenance from the other;

(vi) state in boldface type that, upon entry of final judgment, the parties' rights and obligations with respect to the marriage, including property and maintenance rights, are permanently adjudicated without right of appeal but that neither party is barred from instituting an action to set aside the final judgment for fraud, duress, accident, mistake, or other grounds recognized at law or in equity or to make a motion pursuant to the Montana Rules of Civil Procedure; and

(vii) state that until final judgment is entered, the parties retain the status of married persons and cannot remarry.

(b) The brochure may include other matters that the attorney general considers appropriate.

History: En. Sec. 7, Ch. 795, L. 1991.

Part 2

Support, Custody, Visitation, and Related Provisions

40-4-201. Separation agreement. (1) To promote amicable settlement of disputes between parties to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into a written separation agreement containing provisions for disposition of any property owned by either of them, maintenance of either of them, and support, custody, and visitation of their children.

(2) In a proceeding for dissolution of marriage or for legal separation, the terms of the separation agreement, except those providing for the support, custody, and visitation of children, are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the separation agreement is unconscionable.

(3) If the court finds the separation agreement unconscionable, it may request the parties to submit a revised separation agreement or may make orders for the disposition of property, maintenance, and support.

(4) If the court finds that the separation agreement is not unconscionable as to disposition of property or maintenance and not unsatisfactory as to support:

(a) unless the separation agreement provides to the contrary, its terms shall be set forth in the decree of dissolution or legal separation and the parties shall be ordered to perform them; or

(b) if the separation agreement provides that its terms shall not be set forth in the decree, the decree shall identify the separation agreement and state that the court has found the terms not unconscionable.

(5) Terms of the agreement set forth in the decree are enforceable by all remedies available for enforcement of a judgment, including contempt, and are enforceable as contract terms.

(6) Except for terms concerning the support, custody, or visitation of children, the decree may expressly preclude or limit modification of terms set forth in the decree if the separation agreement so provides. Otherwise, terms of a separation agreement set forth in the decree are automatically modified by modification of the decree.

History: En. 48-320 by Sec. 20, Ch. 536, L. 1975; R.C.M. 1947, 48-320.

Cross-References

Imprisonment for debt, Art. II, sec. 27, Mont. Const.

Contempts, Title 3, ch. 1, part 5.

What acts or omissions are contempts, 3-1-501.

Procedure — contempt not in presence of the court, 3-1-512.

Imprisonment to compel performance, 3-1-520.

Judgments, Title 25, ch. 9.

Assignment of right to periodic installments for certain future damages, 25-9-405.

Execution of judgment, Title 25, ch. 13.

Breach of contract, 27-1-311.

Specific and preventive relief, Title 27, ch. 1, part 4.

Unconscionable contract or clause, 30-2-302.

Alteration of legal relation by contract — separation agreement, 40-2-303.

Consideration for separation, 40-2-304.

40-4-202. Division of property. (1) In a proceeding for dissolution of a marriage, legal separation, or division of property following a decree of dissolution of marriage or legal separation by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to divide the property, the court, without regard to marital misconduct, shall, and in a proceeding for legal separation may, finally equitably apportion between the parties the property and assets belonging to either or both, however and whenever acquired and whether the title thereto is in the name of the husband or wife or both. In making apportionment, the court shall consider the duration of the marriage and prior marriage of either party; the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties; custodial provisions; whether the apportionment is in lieu of or in addition to maintenance; and the opportunity of each for future acquisition of capital assets and income. The court shall also consider the contribution or dissipation of value of the respective estates and the contribution of a spouse as a homemaker or to the family unit. In dividing property acquired prior to the marriage; property acquired by gift, bequest, devise, or descent; property acquired in exchange for property acquired before the marriage or in exchange for property acquired by gift, bequest, devise, or descent; the increased value of property acquired prior to marriage; and property acquired by a spouse after a decree of legal separation, the court shall consider those contributions of the other spouse to the marriage, including:

(a) the nonmonetary contribution of a homemaker;

(b) the extent to which such contributions have facilitated the maintenance of this property; and

(c) whether or not the property division serves as an alternative to maintenance arrangements.

(2) In a proceeding, the court may protect and promote the best interests of the children by setting aside a portion of the jointly and separately held estates of the parties in a separate fund or trust for the support, maintenance, education, and general welfare of any minor, dependent, or incompetent children of the parties.

(3) Each spouse is considered to have a common ownership in marital property that vests immediately preceding the entry of the decree of dissolution or declaration of invalidity. The extent of the vested interest must be determined and made final by the court pursuant to this section.

(4) The division and apportionment of marital property caused by or incident to a decree of dissolution, a decree of legal separation, or a declaration of invalidity is not a sale, exchange, transfer, or disposition of or dealing in property but is a division of the common ownership of the parties for purposes of:

(a) the property laws of this state;

(b) the income tax laws of this state; and

(c) the federal income tax laws.

(5) Premarital agreements must be enforced as provided in Title 40, chapter 2, part 6.

History: En. 48-321 by Sec. 21, Ch. 536, L. 1975; R.C.M. 1947, 48-321; amd. Sec. 1, Ch. 613, L. 1983; amd. Sec. 13, Ch. 189, L. 1987.

Cross-References

Individual income tax, Title 15, ch. 30.

Duties of husband and wife as to support, 40-2-102.

Individual property, Title 40, ch. 2, part 2.

Alteration of legal relation by contract — separation agreement, 40-2-303.

Property rights of husband and wife — how governed, 40-2-311.

Marriage settlement contracts — how executed, 40-2-312.

Dissolution of marriage — legal separation, 40-4-104.

Best interest of children, 40-4-212.

Trust code, Title 72, ch. 33 through 36.

40-4-203. Maintenance. (1) In a proceeding for dissolution of marriage or legal separation or a proceeding for maintenance following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, the court may grant a maintenance order for either spouse only if it finds that the spouse seeking maintenance:

(a) lacks sufficient property to provide for his reasonable needs; and

(b) is unable to support himself through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

(2) The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to marital misconduct, and after considering all relevant facts including:

(a) the financial resources of the party seeking maintenance, including marital property apportioned to him, and his ability to meet his needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;

(b) the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;

(c) the standard of living established during the marriage;

(d) the duration of the marriage;

(e) the age and the physical and emotional condition of the spouse seeking maintenance; and

(f) the ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance.

History: En. 48-322 by Sec. 22, Ch. 536, L. 1975; R.C.M. 1947, 48-322.

Cross-References

Assignment of right to periodic installments for certain future damages, 25-9-405.

Earnings of judgment debtor — exemption from execution for maintenance, 25-13-614.

Individual property, Title 40, ch. 2, part 2.

Necessity determined by standard of living, 40-2-210.

Dissolution of marriage — legal separation, 40-4-104.

Temporary order or temporary injunction, 40-4-121.

40-4-204. Child support — orders to address health insurance — withholding of child support. (1) In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for the child's support, without regard to marital misconduct.

(2) The court shall consider all relevant factors, including:

(a) the financial resources of the child;

(b) the financial resources of the custodial parent;

(c) the standard of living the child would have enjoyed had the marriage not been dissolved;

(d) the physical and emotional condition of the child and the child's educational and medical needs;

(e) the financial resources and needs of the noncustodial parent;

(f) the age of the child;

(g) the cost of day care for the child;

(h) any custody arrangement that is ordered or decided upon; and

(i) the needs of any person, other than the child, whom either parent is legally obligated to support.

(3) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant to 40-5-209. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the parties have entered into an agreement regarding the support amount. A verified representation of the defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in that particular case.

(b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall state its reasons for finding that the application of the standards and guidelines is unjust to the child or a party or is inappropriate in that particular case. Similar reasons must also be stated in a case in which the parties have agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

(4) Each district court judgment, decree, or order establishing a final child support obligation under this title and each modification of a final order for child support must include a provision addressing health insurance coverage in the following cases:

(a) If either party has available through an employer or other organization health insurance coverage for the child or children for which the premium is partially or entirely paid by the employer or organization, the judgment, decree, or order may contain a provision requiring that coverage for the child or children be continued or obtained.

(b) In the event that health insurance required in a child support judgment, decree, or order becomes unavailable to the party who is to provide it, through loss or change of employment or otherwise, that party must, in the absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the requirement.

(c) All temporary child support orders must contain a provision requiring the party who has health insurance in effect for the child or children of the parties to continue the insurance coverage pending final disposition of the case.

(d) The parties may by written agreement provide for the health care coverage required by this section, subject to the approval of the court.

(e) Unless otherwise provided in the decree, the health care coverage required by this section is in addition to and not in substitution, in whole or in part, for the child support obligation.

(5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception is included in the support order, a support obligation established by judgment, decree, or order under this section, whether temporary or final, and each modification of an existing support obligation under 40-4-208 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A support order that omits the written exceptions provided in 40-5-315 or 40-5-411 or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment to the support order or for any further action by the court.

(b) If an obligor is exempt from immediate income withholding, the district court judgment or order must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's income may be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to include a warning statement in a judgment or order does not preclude the use of withholding procedures.

(c) After October 1, 1993, if a support order subject to income withholding is expressed in terms of a monthly obligation, the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's regular pay period.

(6) For the purposes of income withholding under subsection (5), every district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the parent obligated to pay support to inform the court and, if the department of social and rehabilitation services is providing services under Title IV-D of the Social Security Act for the enforcement of the judgment, decree, or order, the department, of the following:

(a) the name and address of the parent's current employer;

(b) whether the parent has access to health insurance through an employer or other group; and

(c) if insurance coverage is available, the health insurance policy information.

(7) If the department of social and rehabilitation services is providing or later provides support enforcement services under Title IV-D of the Social Security Act, each district court order or modification of an order must contain a statement providing that the noncustodial parent, without further order of the court, is required to obtain and maintain health insurance coverage as provided in 40-5-208. Failure to include a warning statement in the judgment or order does not preclude the imposition of sanctions under 40-5-208.

(8) Each district court judgment, decree, or order establishing a final child support obligation under this part and each modification of a final order for child support must contain a statement that the order is subject to review and modification by the department of social and rehabilitation services upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under Title IV-D of the Social Security Act for the enforcement of the order.

(9) (a) A district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the child support to be paid to:

(i) the legal custodian of the minor child;

(ii) (A) any other person, organization, or agency having legal physical custody of the minor child under a legal assignment of rights; or

(B) the court for the benefit of the minor child;

(iii) any other person or agency designated as caretaker of the minor child by agreement of the legal custodian; or

(iv) any assignee or other person, organization, or agency authorized to receive or collect child support.

(b) A judgment, decree, or order that omits the provision required by subsection (9)(a) is subject to the requirements of subsection (9)(a) without need for an amendment to the judgment, decree, or order or for any further action by the court.

History: En. 48-323 by Sec. 23, Ch. 536, L. 1975; R.C.M. 1947, 48-323; amd. Sec. 1, Ch. 590, L. 1983; amd. Sec. 1, Ch. 727, L. 1985; (3)En. Sec. 1, Ch. 434, L. 1985; (4)En. Sec. 1, Ch. 651, L. 1985; amd. Sec. 1, Ch. 702, L. 1989; amd. Sec. 4, Ch. 266, L. 1991; amd. Sec. 1, Ch. 635, L. 1991; amd. Sec. 1, Ch. 294, L. 1993; amd. Sec. 7, Ch. 631, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 294 in (3)(a), near middle, inserted second and third sentences requiring use of guidelines in all cases and allowing use of verified representation of defaulting parent's income and in fourth sentence inserted first clause concerning presumption of adequate and reasonable support; in (2)(b), near beginning, substituted "finds that the guideline amount is unjust or inappropriate in a particular case" for "does not apply these standards and guidelines to determine child support" and inserted last two sentences concerning agreement on support amount and statement of ordinary support amount when varied; and made minor changes in style. Amendment effective April 9, 1993.

Chapter 631 inserted (5)(c) allowing withholding on a weekly or biweekly basis; inserted (9) requiring a provision that support be paid to the child's caretaker or other agency authorized to receive or collect support; and made minor changes in style.

Cross-References

Assignment of right to periodic installments for certain future damages, 25-9-405.

Earnings of judgment debtor — exemption from execution for support, 25-13-614.

Necessity determined by standard of living, 40-2-210.

Dissolution of marriage — legal separation, 40-4-104.

Temporary order or temporary injunction, 40-4-121.

Enforcement of support, Title 40, ch. 5.

Judgment or order — parent and child relationship, 40-6-116.

Obligations of parents, Title 40, ch. 6, part 2.

Allowance to parent, 40-6-212.

Remedy when parent dies without providing for support of child, 40-6-213.

Custody, services, and earnings of child, 40-6-221.

Parental control over property of child, 40-6-232.

40-4-205. Representation of child. The court may appoint an attorney to represent the interests of a minor dependent child with respect to the child's support, custody, and visitation. The county attorney, a deputy county attorney, if any, or the department of family services or any of its staff may not be appointed for this purpose. The court shall enter an order for costs and fees in favor of the child's attorney. The order must be made against either or both parents, except that if the responsible party is indigent, the costs must be waived.

History: En. 48-324 by Sec. 24, Ch. 536, L. 1975; R.C.M. 1947, 48-324; amd. Sec. 1, Ch. 93, L. 1979; amd. Sec. 1, Ch. 434, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 434 in second sentence inserted "or the department of family services or any of its staff"; and made minor changes in style. Amendment effective April 21, 1993.

Cross-References

Allowable costs, Title 25, ch. 10, part 2.

Attorneys' fees, Title 25, ch. 10, part 3.

Costs — attorney's fees, 40-4-110.

Enforcement of minor's rights, 41-1-202.

40-4-206. Payment of maintenance or support to court — handling fee of clerk. (1) Upon its own motion or upon motion of either party, the court may order at any time that maintenance or support payments be made to the clerk of the district court as trustee for remittance to the person entitled to receive the payments.

(2) The clerk of the district court shall maintain records listing the amount of payments, the date payments are required to be made, and the names and addresses of the parties affected by the order. The clerk may charge the payor a handling fee of $2 a payment, which must be in addition to the payment. Any handling fee collected by the clerk under this subsection must be paid into the county general fund unless the county has a district court fund. If the county has a district court fund, the amount must be paid into such fund.

(3) The parties affected by the order shall inform the clerk of the district court of any change of address or of other condition that may affect the administration of the order.

History: En. 48-325 by Sec. 25, Ch. 536, L. 1975; R.C.M. 1947, 48-325; amd. Sec. 1, Ch. 532, L. 1985.

Cross-References

Contempts, Title 3, ch. 1, part 5.

Duties of Clerk of Court, 3-5-501.

Assignment of right to periodic installments for certain future damages, 25-9-405.

Paternity — enforcement of judgment or order, 40-6-117.

Duties of trustees, Title 72, ch. 34, part 1.

40-4-207. Assignments. The court may order the person obligated to pay support or maintenance to make an assignment of a part of his periodic earnings or trust income to the person entitled to receive the payments. The assignment is binding on the employer, trustee, or other payor of the funds 2 weeks after service upon him of notice that it has been made. The payor shall withhold from the earnings or trust income payable to the person obligated to support the amount specified in the assignment and shall transmit the payments to the person specified in the order. The payor may deduct from each payment a sum not exceeding $1 as reimbursement for costs. An employer shall not discharge or otherwise discipline an employee as a result of a wage or salary assignment authorized by this section.

History: **En. 48-326 by Sec. 26, Ch. 536, L. 1975; R.C.M. 1947, 48-326.**

Cross-References

Assignment of right to periodic installments for certain future damages, 25-9-405.

Property exempt from execution — earnings of judgment debtor, 25-13-614.

What property subject to attachment, 27-18-102.

Discharge or layoff of employee because of attachment or garnishment prohibited, 39-2-302.

Powers of trustees, Title 72, ch. 34, part 3.

40-4-208. Modification and termination of provisions for maintenance, support, and property disposition. (1) Except as otherwise provided in 40-4-201(6), a decree may be modified by a court as to maintenance or support only as to installments accruing subsequent to actual notice to the parties of the motion for modification.

(2) (a) Whenever the decree proposed for modification does not contain provisions relating to maintenance or support, modification under subsection (1) may only be made within 2 years of the date of the decree.

(b) Whenever the decree proposed for modification contains provisions relating to maintenance or support, modification under subsection (1) may only be made:

(i) upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable;

(ii) upon written consent of the parties; or

(iii) upon application by the department of social and rehabilitation services, whenever the department of social and rehabilitation services is providing services under Title IV-D of the federal Social Security Act. The support obligation must be modified, as appropriate, in accordance with the guidelines promulgated under 40-5-209. A modification under this subsection may not be made within 12 months after the establishment of the order or the most recent modification.

(3) The provisions as to property disposition may not be revoked or modified by a court, except:

(a) upon written consent of the parties; or

(b) if the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

(4) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

(5) Provisions for the support of a child are terminated by emancipation of the child or the child's graduation from high school if the child is enrolled in high school, whichever occurs later, but in no event later than the child's 19th birthday, unless the termination date is extended or knowingly waived by written agreement or by an express provision of the decree. Provisions for the support of a child do not terminate upon the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump-sum payment, to the extent just and appropriate in the circumstances.

History: En. 48-330 by Sec. 30, Ch. 536, L. 1975; R.C.M. 1947, 48-330; amd. Sec. 1, Ch. 464, L. 1979; amd. Sec. 1, Ch. 212, L. 1987; amd. Sec. 27, Ch. 549, L. 1989; amd. Sec. 28, Ch. 702, L. 1989; amd. Sec. 1, Ch. 342, L. 1991.

Cross-References

Unconscionable contract or clause, 30-2-302.

Temporary order or temporary injunction, 40-4-121.

Remedy when parent dies without providing for support of child, 40-6-213.

Minors and adults defined, 41-1-101.

Claims against decedent, 72-3-104.

Creditors' claims, Title 72, ch. 3, part 8.

40-4-209. Security or guaranty to secure support. (1) Upon verified application by a person authorized to enforce or collect a child support obligation the department of family services or the department of social and rehabilitation services showing that a person obligated to pay child support or maintenance pursuant to court or administrative order is delinquent in an amount equal to the total of 6 months' support payments, the court may direct the obligated person to appear and show cause why an order should not be entered ordering that he post bond, give a mortgage, or provide other security or guaranty for the payment of the delinquency.

(2) If the court finds that a delinquency greater than the total of 6 months of support is owed and that the obligated person has the ability to post bond, give a mortgage, or provide security or other guaranty, the court may enter an order requiring him to post bond, give a mortgage, or provide security or guaranty for so long as there is a support delinquency.

(3) The bond or other security may be in an amount up to the total support due for a 2-year period and must be approved by the court. The bond must include the name and address of the issuer. Any person issuing a bond under this section must, if the bond is cancelled, notify the court and the person or public agency entitled to receive payments under the support order.

(4) If the person obligated to pay child support or maintenance fails to make payments as required by the court or administrative order, the person or public agency entitled to receive payment may recover on the bond or other security. The amount recovered on the bond or other security must first be applied toward satisfaction of any support arrearages.

(5) The department of social and rehabilitation services shall adopt guidelines which take into account the payment record of the obligated person, the availability of other remedies, and other considerations which it determines relevant for determining whether the procedure provided in this section would carry out the purpose of enforcing payments of child support or would be appropriate in the circumstances. If after application of the guidelines the department of social and rehabilitation services determines an application for an order requiring security is not appropriate, it may not request the order.

History: En. Sec. 1, Ch. 521, L. 1985; amd. Sec. 98, Ch. 370, L. 1987; amd. Sec. 26, Ch. 609, L. 1987; amd. Sec. 20, Ch. 702, L. 1989.

Cross-References

Undertakings for security, Title 25, ch. 1, part 4.

Motions and other papers, Rule 7(b), M.R.Civ.P. (see Title 25, ch. 20).

Evidence on motions, Rule 43(e), M.R.Civ.P. (see Title 25, ch. 20).

Guaranty, indemnity, and suretyship, Title 28, ch. 11.

Mortgages, Title 71, ch. 1.

40-4-210. Child support jurisdiction — nonresident individual. A court of this state that is competent to decide child support matters may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator in a child support determination in the initial or modification decree if:

(1) the individual is personally served with notice within this state in accordance with Rule 4B, Montana Rules of Civil Procedure;

(2) the individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document that has the effect of waiving any contest to personal jurisdiction;

(3) the individual has resided with the child within this state;

(4) the child was adopted within this state when at least one parent was a resident;

(5) the individual resided in this state and provided prenatal expenses or support for the child;

(6) the child resides in this state as a result of the acts or directives of the individual;

(7) the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse; or

(8) there is any other basis consistent with the constitutions of this state and the United States for the exercise of the personal jurisdiction.

History: En. Sec. 1, Ch. 459, L. 1989; amd. Sec. 52, Ch. 328, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 328 in introduction, after "nonresident", substituted "individual or the individual's guardian or conservator" for "parent"; in (1) substituted "individual is personally served with notice within this state in accordance with Rule 4B, Montana Rules of Civil Procedure" for "nonresident parent has resided with the child in this state"; in (2) substituted jurisdiction by consent for jurisdiction by reason of maintaining a marital domicile in this state from which the child was conceived or adopted; in (4), before "adopted", deleted "conceived or"; inserted (5) through (7) relating to an individual residing in this state and providing prenatal expenses or support for the child, a child residing in this state because of the individual's acts or directives, and a child that may have been conceived in this state by the individual; and made minor changes in style.

Cross-References

Residence — rules for determining, 1-1-215.

Means to carry jurisdiction into effect, 3-1-113.

District Court jurisdiction, Title 3, ch. 5, part 3.

Jurisdiction of persons, Rule 4B, M.R.Civ.P. (see Title 25, ch. 20).

Lack of jurisdiction as defense, Rule 12(b), M.R.Civ.P. (see Title 25, ch. 20).

Child support, 40-4-204.

Obligations of parents for the support of their children, 40-6-211.

40-4-211. Child custody jurisdiction — commencement of proceedings. (1) A court of this state competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

(a) this state:

(i) is the home state of the child at the time of commencement of the proceedings; or

(ii) had been the child's home state within 6 months before commencement of the proceeding and the child is absent from this state because of his removal or retention by a person claiming his custody or for other reason and a parent or person acting as parent continues to live in this state; or

(b) it is in the best interest of the child that a court of this state assume jurisdiction because:

(i) the child and his parents or the child and at least one contestant have a significant connection with this state; and

(ii) there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or

(c) the child is physically present in this state and:

(i) has been abandoned; or

(ii) it is necessary in an emergency to protect him because he has been subjected to or threatened with mistreatment or abuse or is neglected or dependent; or

(d) (i) no other state has jurisdiction under prerequisites substantially in accordance with subsections (1)(a), (1)(b), or (1)(c) of this section or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine custody of the child; and

(ii) it is in his best interest that the court assume jurisdiction.

(2) Except under subsections (1)(c) and (1)(d) of this section, physical presence in this state of the child or of the child and one of the contestants is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.

(3) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.

(4) A child custody proceeding is commenced in the district court:

(a) by a parent, by filing a petition:

(i) for dissolution or legal separation; or

(ii) for custody of the child in the county in which he is permanently resident or found; or

(b) by a person other than a parent, by filing a petition for custody of the child in the county in which he is permanently resident or found, but only if he is not in the physical custody of one of his parents.

(5) Notice of a child custody proceeding shall be given to the child's parent, guardian, custodian, those persons having physical custody of the child, and all other contestants, who may appear, be heard, and file a responsive pleading. The court, upon a showing of good cause, may permit intervention of other interested parties.

History: En. 48-331 by Sec. 31, Ch. 536, L. 1975; amd. Sec. 11, Ch. 33, L. 1977; amd. Sec. 27, Ch. 537, L. 1977; R.C.M. 1947, 48-331.

Cross-References

Residence — rules for determining, 1-1-215.

Means to carry jurisdiction into effect, 3-1-113.

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Permissive intervention, Rule 24(b), M.R.Civ.P. (see Title 25, ch. 20).

When custody may be awarded without dissolution proceedings, 40-6-224.

Uniform Child Custody Jurisdiction Act — jurisdiction, 40-7-104.

Jurisdiction and venue — abused, neglected, and dependent youths, 41-3-103.

40-4-212. Best interest of child. (1) The court shall determine custody in accordance with the best interest of the child. The court shall consider all relevant factors, including but not limited to:

(a) the wishes of the child's parent or parents as to his custody;

(b) the wishes of the child as to his custodian;

(c) the interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interest;

(d) the child's adjustment to his home, school, and community;

(e) the mental and physical health of all individuals involved;

(f) physical abuse or threat of physical abuse by one parent against the other parent or the child; and

(g) chemical dependency, as defined in 53-24-103, or chemical abuse on the part of either parent.

(2) A de facto custody arrangement, in the absence of a prior custody decree, does not require the child's parent or parents to prove the factors set forth in 40-4-219.

History: En. 48-332 by Sec. 32, Ch. 536, L. 1975; R.C.M. 1947, 48-332; amd. Sec. 1, Ch. 379, L. 1987; amd. Sec. 1, Ch. 303, L. 1989.

Cross-References

Best interests of the child — custody to father — legitimation, 40-6-130.

When custody may be awarded without dissolution proceedings, 40-6-224.

Guardians of minors, Title 72, ch. 5, part 2.

40-4-213. Temporary orders. (1) A party to a custody proceeding may move for a temporary custody order. The motion must be supported by an affidavit as provided in 40-4-220(1). The court may award temporary custody under the standards of 40-4-212 after a hearing or under the standards of 40-4-212 and 40-4-220(2) before a hearing. If there is no objection, the court may act solely on the basis of the affidavits.

(2) If a proceeding for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the court finds, after a hearing, that the circumstances of the parents and the best interest of the child require that a custody decree be issued.

(3) If a custody proceeding commenced in the absence of a petition for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated.

History: En. 48-333 by Sec. 33, Ch. 536, L. 1975; amd. Sec. 12, Ch. 33, L. 1977; R.C.M. 1947, 48-333; amd. Sec. 1, Ch. 410, L. 1979.

Cross-References

Affidavits, Title 26, ch. 1, part 10.

Dissolution of marriage — legal separation, 40-4-104.

Temporary order or temporary injunction, 40-4-121.

Custody of children where husband and wife living separately, 40-6-222.

When custody may be awarded without dissolution proceedings, 40-6-224.

Declaration of purpose of Youth Court Act, 41-5-102.

40-4-214. Interviews. (1) The court may interview the child in chambers to ascertain the child's wishes as to his custodian and as to visitation. The court may permit counsel to be present at the interview. The court shall cause a record of the interview to be made and to be part of the record in the case.

(2) The court may seek the advice of professional personnel, whether or not employed by the court on a regular basis. The advice given shall be in writing and made available by the court to counsel upon request. Counsel may examine as a witness any professional personnel consulted by the court.

History: En. 48-334 by Sec. 34, Ch. 536, L. 1975; R.C.M. 1947, 48-334.

Cross-References

Sittings of court — when private, 3-1-313.

Court reporters — duties, 3-5-603.

Expert witnesses' fees, 26-2-505.

Expert witness, Art. VII, M.R.Ev. (see Title 26, ch. 10).

What constitutes undue influence, 28-2-407.

40-4-215. Investigations and reports. (1) In contested custody proceedings and in other custody proceedings if a parent or the child's custodian requests, the court may order an investigation and report concerning custodial arrangements for the child. The department of family services may not be ordered to conduct the investigation or draft a report unless the parent or the child's custodian requesting the investigation is a recipient of aid to families with dependent children, food stamps, [or general relief benefits] and all reasonable options for payment of the investigation, if conducted by a person not employed by the department, are exhausted. The department may consult with any investigator and share information relevant to the child's best interests. The cost of the investigation and report must be paid according to the final order.

(2) In preparing a report concerning a child, the investigator may consult any person who may have information about the child and the child's potential custodial arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained if the child has reached the age of 16 unless the court finds that the child lacks mental capacity to consent. If the requirements of subsection (3) are fulfilled, the investigator's report may be received in evidence at the hearing.

(3) The court shall mail the investigator's report to counsel and to any party not represented by counsel at least 10 days prior to the hearing. The investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (2), and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person the investigator has consulted for cross-examination. A party may not waive the right of cross-examination prior to the hearing.

History: En. 48-335 by Sec. 35, Ch. 536, L. 1975; R.C.M. 1947, 48-335; amd. Sec. 1, Ch. 277, L. 1981; amd. Sec. 1, Ch. 624, L. 1987; amd. Sec. 2, Ch. 434, L. 1993; amd. Sec. 7, Ch. 561, L. 1993.

Compiler's Comments

1993 Amendments — Composite Section: Chapter 434 in (1) substituted present second and third sentences regarding conditions under which the Department may be ordered to conduct the investigation or draft a report for former second and third sentences that read: "If the court orders the department of family services to conduct the investigation, the department may charge a reasonable fee. The department shall waive the fee for conducting the investigation if the parent or the child's custodian requesting the investigation is a recipient of aid to families with dependent children, food stamps, or general relief benefits"; and made minor changes in style. Amendment effective April 21, 1993.

Chapter 561 in (1), at end of third sentence after "food stamps", deleted "or general relief benefits"; and made minor changes in style. Amendment effective July 1, 1993.

Bracketed language in (1), though technically valid, is of no legal effect because general relief benefits were eliminated by other legislation adopted by the 1993 Legislature.

Chapter 434 and Ch. 561 made style changes that were slightly different. In each case, the codifier chose the more appropriate of the two.

Cross-References

Expert witnesses, Art. VII, M.R.Ev. (see Title 26, ch. 10).

Consent in general, Title 28, ch. 2, part 3.

When parent may bring action for the exclusive control of the children — decree, 40-6-223.

40-4-216. Hearings. (1) Custody proceedings shall receive priority in being set for hearing.

(2) The court may tax as costs the payment of necessary travel and other expenses incurred by any person whose presence at the hearing the court deems necessary to determine the best interest of the child.

(3) The court without a jury shall determine questions of law and fact. If it finds that a public hearing may be detrimental to the child's best interest, the court may exclude the public from a custody hearing but may admit any person who has a direct and legitimate interest in the particular case or a legitimate educational or research interest in the work of the court.

(4) If the court finds it necessary that the record of any interview, report, investigation, or testimony in a custody proceeding be kept secret to protect the child's welfare, the court may make an appropriate order sealing the record.

History: En. 48-336 by Sec. 36, Ch. 536, L. 1975; R.C.M. 1947, 48-336.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Sittings of court — when private, 3-1-313.

Costs, Title 25, ch. 10.

Allowable costs, Title 25, ch. 10, part 2.

Costs — attorney's fees, 40-4-110.

Hearings and studies in another state — orders to appear, 40-7-120.

Priority of custody proceedings, 40-7-125.

40-4-217. Visitation. (1) A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral, or emotional health.

(2) In a proceeding for dissolution of marriage or legal separation, the court may, upon the petition of a grandparent, grant reasonable visitation rights to the grandparent of the child if the court finds, after a hearing, that the visitation would be in the best interest of the child.

(3) The court may modify an order granting or denying visitation rights whenever modification would serve the best interest of the child; but the court may not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral, or emotional health or unless the provisions of subsection (6) apply.

(4) So long as a noncustodial parent who has visitation rights under a decree or a custody agreement remains a resident of this state, a resident custodial parent shall, before changing the child's residence to another state and unless the noncustodial parent has given written consent, give written notice to the noncustodial parent, as provided in subsection (5).

(5) The written notice required by subsection (4) must be served personally or given by certified mail not less than 30 days before the proposed change in residence. Proof of service must be filed with the court that issued the

custody order. The purpose of the notice is to allow the noncustodial parent to seek a modification of his visitation schedule.

(6) (a) If a noncustodial parent has been convicted of any of the crimes listed in subsection (6)(c), the custodial parent or any other person who has been granted custody of the child pursuant to court order may file an objection to visitation with the court. The custodial parent or other person having custody shall give notice to the noncustodial parent of the objection as provided by the Montana Rules of Civil Procedure, and the noncustodial parent shall have 20 days from the notice to respond. If the noncustodial parent fails to respond within 20 days, the visitation rights of the noncustodial parent are suspended until further order of the court. If the noncustodial parent responds and objects, a hearing must be held within 30 days of the response.

(b) The noncustodial parent has the burden at the hearing to prove that visitation by the noncustodial parent does not seriously endanger the child's physical, mental, moral, or emotional health and that the modification of visitation is not in the best interest of the child.

(c) This subsection (6) applies to the following crimes:

(i) deliberate homicide, as described in 45-5-102;

(ii) mitigated deliberate homicide, as described in 45-5-103;

(iii) sexual assault, as described in 45-5-502;

(iv) sexual intercourse without consent, as described in 45-5-503;

(v) incest, as described in 45-5-507;

(vi) aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);

(vii) endangering the welfare of children, as described in 45-5-622;

(viii) domestic abuse of the type described in 45-5-206(1)(a);

(ix) sexual abuse of children, as described in 45-5-625.

History: En. 48-337 by Sec. 37, Ch. 536, L. 1975; R.C.M. 1947, 48-337; amd. Sec. 3, Ch. 17, L. 1979; amd. Sec. 1, Ch. 509, L. 1987; amd. Sec. 1, Ch. 405, L. 1989.

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

When parent may bring action for the exclusive control of children — decree, 40-6-223.

Grandparent visitation rights, 40-9-102.

40-4-218. Judicial supervision. (1) Except as otherwise agreed by the parties in writing at the time of the custody decree, the custodian may determine the child's upbringing, including his education, health care, and religious training, unless the court after hearing finds, upon motion by the noncustodial parent, that in the absence of a specific limitation of the custodian's authority, the child's physical health would be endangered or his emotional development significantly impaired.

(2) If both parents or all contestants agree to the order or if the court finds that in the absence of the order the child's physical health would be endangered or his emotional development significantly impaired, the court may order the department of family services to exercise continuing supervision over the case to assure that the custodial or visitation terms of the decree are carried out.

History: En. 48-338 by Sec. 38, Ch. 536, L. 1975; R.C.M. 1947, 48-338; amd. Sec. 12, Ch. 609, L. 1987.

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

Obligations of parents for the support and education of their children, 40-6-211.

Right of parent to determine the residence of child, 40-6-231.

Endangering the welfare of children, 45-5-622.

Child welfare services, Title 52, ch. 2, part 1.

40-4-219. Modification. (1) The court may in its discretion modify a prior custody decree if it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian and that the modification is necessary to serve the best interest of the child and if it further finds that:

(a) the custodian agrees to the modification;

(b) the child has been integrated into the family of the petitioner with consent of the custodian;

(c) the child's present environment endangers seriously his physical, mental, moral, or emotional health and the harm likely to be caused by a change of environment is outweighed by its advantages to him;

(d) the child is 14 years of age or older and desires the modification;

(e) the custodian willfully and consistently:

(i) refuses to allow the child to have any contact with the noncustodial parent; or

(ii) attempts to frustrate or deny the noncustodial parent's exercise of visitation rights; or

(f) the custodial parent has changed or intends to change the child's residence to another state.

(2) A court may modify a de facto custody arrangement in accordance with the factors set forth in 40-4-212.

(3) The court shall presume the custodian is not acting in the child's best interest if the custodian does any of the acts specified in subsection (1)(e) or (8).

(4) The court may modify the prior decree based on subsection (1)(f) to provide a new visitation schedule and to apportion transportation costs between the parents.

(5) Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.

(6) A custody decree may be modified upon the death of the custodial parent pursuant to 40-4-221.

(7) As used in this section, "prior custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding.

(8) (a) If a parent has been convicted of any of the crimes listed in subsection (8)(c), the other parent or any other person who has been granted custody of the child pursuant to court order may file an objection to the current custody order with the court. The parent or other person having custody shall give notice to the convicted parent of the objection as provided by the Montana Rules of Civil Procedure, and the convicted parent shall have 20 days from the notice to respond. If the convicted parent fails to respond within 20 days, the custody rights of the convicted parent are suspended until further order

of the court. If the convicted parent responds and objects, a hearing must be held within 30 days of the response.

(b) The convicted parent has the burden at the hearing to prove that custody by the convicted parent does not seriously endanger the child's physical, mental, moral, or emotional health and that the modification of custody is not in the best interest of the child.

(c) This subsection (8) applies to the following crimes:

(i) deliberate homicide, as described in 45-5-102;

(ii) mitigated deliberate homicide, as described in 45-5-103;

(iii) sexual assault, as described in 45-5-502;

(iv) sexual intercourse without consent, as described in 45-5-503;

(v) incest, as described in 45-5-507;

(vi) aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);

(vii) endangering the welfare of children, as described in 45-5-622;

(viii) domestic abuse of the type described in 45-5-206(1)(a);

(ix) sexual abuse of children, as described in 45-5-625.

History: En. 48-339 by Sec. 39, Ch. 536, L. 1975; R.C.M. 1947, 48-339; amd. Sec. 4, Ch. 127, L. 1979; amd. Sec. 2, Ch. 410, L. 1979; amd. Sec. 1, Ch. 449, L. 1983; amd. Sec. 2, Ch. 509, L. 1987; amd. Sec. 2, Ch. 303, L. 1989; amd. Sec. 2, Ch. 405, L. 1989.

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

Costs — attorney's fees, 40-4-110.

Child custody jurisdiction — commencement of proceedings, 40-4-211.

Modification of custody decree of another state, 40-7-115.

Custodial interference, 45-5-304.

Endangering the welfare of children, 45-5-622.

40-4-220. Affidavit practice. (1) A party seeking a temporary custody order or modification of a custody decree shall submit, together with his moving papers, an affidavit setting forth facts supporting the requested order or modification and shall give notice, together with a copy of his affidavit, to other parties to the proceeding, who may file opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested order or modification should not be granted.

(2) (a) A party seeking a temporary custody order may request that the court grant a temporary assignment of custody ex parte. He shall so request in his moving papers and shall submit an affidavit showing that:

(i) no previous determination of custody has been made by a court and it would be in the child's best interest under the standards of 40-4-212 if temporary custody were placed with the person designated by the moving party; or

(ii) although a previous determination of custody has been made, the child's present environment endangers his physical or emotional health and an immediate change of custody would serve to protect the child's physical or emotional health.

(b) If the court finds from the affidavits submitted by the moving party that a temporary assignment of custody would be in the child's best interest under the standards of 40-4-212 or that the child's physical or emotional health is endangered and would be protected by a temporary assignment of custody, the court shall make an order placing temporary custody with the person designated by the moving party or with some other person designated by the court and shall require all parties to appear and show cause within 20 days from the execution of the order why, in the case of a temporary order issued under subsection (2)(a)(i), the temporary order should not remain in effect until further order of court or, in the case of a temporary order issued under subsection (2)(a)(ii), the court should not restore the child to the custodian from whom the child was removed by the temporary order.

History: En. 48-340 by Sec. 40, Ch. 536, L. 1975; R.C.M. 1947, 48-340; amd. Sec. 3, Ch. 410, L. 1979.

Cross-References

Affidavits, Title 26, ch. 1, part 10.

When parent may bring action for the exclusive control of children — decree, 40-6-223.

Information under oath to be submitted to the court, 40-7-110.

40-4-221. Determination of custody upon death of custodial parent. (1) Upon the death of a parent granted custody of a child, custody shall pass to the noncustodial parent unless one or more parties named in subsection (2) request a custody hearing. The noncustodial parent shall be a party in any proceeding brought under this section.

(2) Upon the death of a parent granted custody of a child, any of the following parties may request a custody hearing and seek custody of the child:

(a) the noncustodial natural parent;

(b) the surviving spouse of the deceased custodial parent;

(c) a person nominated by the will of the deceased custodial parent;

(d) any person nominated by the child if the child is at least 12 years old;

(e) any other person if that person has actual physical control over the child;

(f) any other party whom, upon showing of good cause, the court permits to intervene as an interested party.

(3) The hearing and determination of custody shall be governed by this part.

History: En. Secs. 1, 2, 3, Ch. 127, L. 1979.

Cross-References

Permissive intervention, Rule 24(b), M.R.Civ.P. (see Title 25, ch. 20).

Remedy when parent dies without providing for support of child, 40-6-213.

Custody, services, and earnings of child, 40-6-221.

40-4-222. Declaration of legislative intent — joint custody. The legislature of the state of Montana finds and declares that it is the public policy of this state to assure minor children frequent and continuing contact with both parents after the parents have separated or dissolved their marriage and to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy. The legislature believes that the district courts of the state of Montana have the authority to award joint custody if the court finds joint custody in the best interests of the children in the case then before the court. The intent of 40-4-222 through 40-4-225 is to establish certain guidelines for resolution of custody disputes.

History: En. Sec. 1, Ch. 416, L. 1981.

Cross-References

Best interests of the child — custody to father — legitimation, 40-6-130.

When custody may be awarded without dissolution proceedings, 40-6-224.

40-4-223. Award of joint or separate custody. (1) In custody disputes involving both parents of a minor child, the court shall award custody according to the best interests of the child as set out in 40-4-212:

(a) to both parents jointly; the court shall inquire whether a joint custody agreement was made knowingly and voluntarily; or

(b) to either parent. In making an award to either parent, the court shall consider, along with the factors set out in 40-4-212, which parent is more likely to allow the child frequent and continuing contact with the noncustodial parent and may not prefer a parent as custodian because of the parent's sex.

(2) In making an award, the court shall require the submission of a plan for the implementation of the custody order.

(3) In making an award, the court shall state in its decision the reasons and factors considered in making the award.

History: En. Sec. 2, Ch. 416, L. 1981; amd. Sec. 2, Ch. 727, L. 1985.

Cross-References

Best interests of the child — custody to father — legitimation, 40-6-130.

When custody may be awarded without dissolution proceedings, 40-6-224.

Preservation of documents for use in other states, 40-7-122.

40-4-224. Joint custody — modification — consultation with professionals. (1) Upon application of either parent or both parents for joint custody, the court shall presume joint custody is in the best interest of a minor child unless the court finds, under the factors set forth in 40-4-212, that joint custody is not in the best interest of the minor child. If the court declines to enter an order awarding joint custody, the court shall state in its decision the reasons for denial of an award of joint custody. Objection to joint custody by a parent seeking sole custody is not a sufficient basis for a finding that joint custody is not in the best interest of a child, nor is a finding that the parents are hostile to each other. However, a finding that one parent physically abused the other parent or the child is a sufficient basis for finding that joint custody is not in the best interest of the child.

(2) For the purposes of this section, "joint custody" means an order awarding custody of the minor child to both parents and providing that the physical custody and residency of the child shall be allotted between the parents in such a way as to assure the child frequent and continuing contact with both parents. The allotment of time between the parents must be as equal as possible; however:

(a) each case shall be determined according to its own practicalities, with the best interest of the child as the primary consideration; and

(b) when allotting time between the parents, the court shall consider the effect of the time allotment on the stability and continuity of the child's education.

(3) Any order for joint custody may be modified pursuant to 40-4-219 to terminate the joint custody.

(4) The court may, at any time, direct the parties to consult with appropriate professionals for the purpose of assisting the parties to formulate a plan for implementation of the custody order or to resolve any controversy that has arisen in the implementation of a plan for custody.

History: En. Sec. 3, Ch. 416, L. 1981; amd. Sec. 1, Ch. 496, L. 1985; amd. Sec. 3, Ch. 727, L. 1985; amd. Sec. 2, Ch. 379, L. 1987; amd. Sec. 1, Ch. 365, L. 1989.

Cross-References

Best interests of the child — custody to father — legitimation, 40-6-130.

Obligations of parents for education of child, 40-6-211.

When custody may be awarded without dissolution proceedings, 40-6-224.

Preservation of documents for use in other states, 40-7-122.

40-4-225. Access to records by noncustodial parent. Notwithstanding any other provision of law, access to records and information pertaining to a minor child, including but not limited to medical, dental, law enforcement, and school records, may not be denied to a parent because such parent is not the child's custodial parent.

History: En. Sec. 4, Ch. 416, L. 1981.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right to privacy, Art. II, sec. 10, Mont. Const.

Immunization record, 20-5-406.

Youth law enforcement records, 41-5-602.

Part 3
Family Law Mediation

40-4-301. Family law mediation — exception. (1) The district court may at any time consider the advisability of requiring the parties to a proceeding under this chapter to participate in the mediation of the case. Any party may request the court to order mediation. If the parties agree to mediation, the court may require the attendance of the parties or the representatives of the parties with authority to settle the case at the mediation sessions.

(2) The court may not authorize or permit continuation of mediated negotiations if the court has reason to suspect that one of the parties or a child of a party has been physically, sexually, or emotionally abused by the other party.

(3) The court shall appoint a mediator from the list maintained pursuant to 40-4-306. By agreement of all parties, mediators not on the list may be appointed.

(4) The court may adopt rules to implement this part.

History: En. Sec. 1, Ch. 199, L. 1993.

40-4-302. Mediation proceeding — tolling of statute of limitations. (1) The purpose of a mediation proceeding is to reduce the acrimony that may exist between the parties and to develop an agreement that is supportive of the best interests of a child involved in the proceeding.

(2) The mediator shall attempt to effect a settlement of the child custody, child support, visitation, maintenance, or property settlement dispute. The mediator may not use coercive measures to effect the settlement. The mediator may recommend that a party obtain assistance from other resources in the community.

(3) Subject to 40-4-301(1), the mediator may exclude attorneys from the mediation sessions. The parties' attorneys may confer with the mediator prior to the mediation session and may review and approve any agreement.

(4) An applicable statute of limitations is tolled as to the participants during the period of mediation. The tolling commences on the date the parties agree in writing to participate in the mediation or when the court orders

mediation, whichever is later, and ends on the date the mediation is officially terminated by the mediator.

History: **En. Sec. 2, Ch. 199, L. 1993.**

40-4-303. Proceedings — records — confidentiality. Mediation proceedings must be conducted in private. All records of a mediation proceeding are confidential and may not be used in evidence in an action enumerated in 40-4-301. Matters subject to the mediation proceeding are confidential. A mediator or a party to the mediation is not subject to compelled disclosure of any part of the mediation proceeding.

History: **En. Sec. 3, Ch. 199, L. 1993.**

40-4-304. Mediator recommendation. The mediator may, upon stipulation by the parties, recommend temporary orders to the court prior to the final decree.

History: **En. Sec. 4, Ch. 199, L. 1993.**

40-4-305. Mediation agreement. An agreement reached by the parties as a result of mediation must be discussed by the parties with their attorneys, if any, and the approved agreement may be submitted to the court. An agreement may not be submitted to the court if any party objects. The court may adopt the agreement.

History: **En. Sec. 5, Ch. 199, L. 1993.**

40-4-306. Mediator list. The district court shall establish and maintain a list of mediators available to assist parties in formally mediating disputes as provided in 40-4-301 and 40-4-302. The list of mediators must be maintained by the clerk of court. The clerk of court may accept the applications of individuals who meet the qualifications required under 40-4-307 and who seek placement on the mediator list. The applications must be presented to the court for review and approval. A mediator may be a member of the staff or contracted staff of a district court, probation department, mental health services agency, or private mediation service.

History: **En. Sec. 6, Ch. 199, L. 1993.**

40-4-307. Mediator qualifications. A mediator shall meet the following minimum qualifications:

(1) knowledge of the court system and the procedures used in family law matters;

(2) knowledge of other resources in the community to which the parties may be referred for assistance;

(3) if applicable, knowledge of child development, clinical issues relating to children, the effects of marriage dissolution on children, and child custody research; and

(4) knowledge of the mediation process.

History: **En. Sec. 7, Ch. 199, L. 1993.**

40-4-308. Court to establish fees. A court may establish a fee schedule for the costs of administering this part. The fees must be paid by the parties to the mediation proceeding.

History: **En. Sec. 8, Ch. 199, L. 1993.**

CHAPTER 5

ENFORCEMENT OF SUPPORT

Part 1 — Uniform Interstate Family Support Act

40-5-101. Short title.
40-5-102. Repealed.
40-5-103. Definitions.
40-5-104. Renumbered 40-5-144 by Code Commissioner, 1993.
40-5-105. Repealed.
40-5-106. Renumbered 40-5-153 by Code Commissioner, 1993.
40-5-107. Renumbered 40-5-154 by Code Commissioner, 1993.
40-5-108 through 40-5-114. Repealed.
40-5-115. Renumbered 40-5-161 by Code Commissioner, 1993.
40-5-116. Repealed.
40-5-117. Repealed.
40-5-118. Renumbered 40-5-165 by Code Commissioner, 1993.
40-5-119. Renumbered 40-5-166 by Code Commissioner, 1993.
40-5-120 through 40-5-132. Repealed.
40-5-133. Renumbered 40-5-183 by Code Commissioner, 1993.
40-5-134. Repealed.
40-5-135. Repealed.
40-5-136. Repealed.
40-5-137. Renumbered 40-5-184 by Code Commissioner, 1993.
40-5-138. Repealed.
40-5-139. Repealed.
40-5-140. Renumbered 40-5-185 by Code Commissioner, 1993.
40-5-141. Renumbered 40-5-186 by Code Commissioner, 1993.
40-5-142. Renumbered 40-5-197 by Code Commissioner, 1993.
40-5-143. Tribunals of this state.
40-5-144. Remedies cumulative.
40-5-145. Bases for jurisdiction over nonresident.
40-5-146. Procedure when exercising jurisdiction over nonresident.
40-5-147. Initiating and responding tribunal of this state.
40-5-148. Simultaneous proceedings in another state.
40-5-149. Continuing, exclusive jurisdiction.
40-5-150. Enforcement and modification of support order by tribunal having continuing jurisdiction.
40-5-151. Recognition of child support orders.
40-5-152. Multiple child support orders for two or more obligees.
40-5-153. Grounds for rendition.
40-5-154. Conditions of rendition.
40-5-155 through 40-5-157 reserved.
40-5-158. Proceedings under this part.
40-5-159. Action by a minor parent.
40-5-160. Application of law of this state.
40-5-161. Duties of initiating tribunal.
40-5-162. Duties and powers of responding tribunal.
40-5-163. Inappropriate tribunal.
40-5-164. Duties of support enforcement agency.
40-5-165. Duties of state information agency.
40-5-166. Duty of attorney general.
40-5-167 through 40-5-169 reserved.
40-5-170. Private counsel.
40-5-171. Pleadings and accompanying documents.
40-5-172. Nondisclosure of information in exceptional circumstances.
40-5-173. Costs and fees.
40-5-174. Nonparentage as defense — limitation.

40-5-175. Special rules of evidence and procedure.
40-5-176. Communications between tribunals.
40-5-177. Assistance with discovery.
40-5-178. Receipt and disbursement of payments.
40-5-179. Petition to establish support order.
40-5-180. Administrative enforcement of orders.
40-5-181 and 40-5-182 reserved.
40-5-183. Limited immunity of petitioner.
40-5-184. Registration of order for enforcement.
40-5-185. Procedure to register order for enforcement.
40-5-186. Effect of registration enforcement.
40-5-187. Choice of law.
40-5-188. Notice of registration of order.
40-5-189. Procedure to contest validity or enforcement of registered order.
40-5-190. Contest of registration or enforcement.
40-5-191. Confirmed order.
40-5-192. Procedure to register child support order of another state for modification.
40-5-193. Effect of registration for modification.
40-5-194. Modification of child support order of another state.
40-5-195. Recognition of order modified in another state.
40-5-196. Proceeding to determine parentage.
40-5-197. Uniformity of interpretation.
40-5-198 and 40-5-199 reserved.

Part 2 — Administrative Enforcement of Support

40-5-201. Definitions.
40-5-202. Department of social and rehabilitation services — powers and duties regarding collection of support debt.
40-5-203. Child support enforcement services.
40-5-204. Cooperation by obligee.
40-5-205. Payment of support money collected to department — notice.
40-5-206. Central unit for information and administration — cooperation enjoined — availability of records.
40-5-207. Department authorized to enforce maintenance awards.
40-5-208. Medical support — obligation enforcement — sanctions.
40-5-209. Child support guidelines — periodic review.
40-5-210. Standardized fee schedule — rules.
40-5-211. Petition for support order by married parent with minor children receiving public assistance.
40-5-212. Petition for support order by married parent with minor children receiving public assistance — powers of court.
40-5-213. Financial statements by obligor — penalty.
40-5-214. Scale of suggested minimum contributions.
40-5-215 through 40-5-220 reserved.
40-5-221. Debt to state by obligor — limitations.
40-5-222. Support debt based upon support order — notice — contents — action to collect.
40-5-223. Notice of support liability based upon payment of public assistance — notice — contents — collection warrant — fair hearing.
40-5-224. Finding of support liability based upon payment of public assistance — warrant for distraint — bond to release warrant — action to collect.
40-5-225. Notice of financial responsibility — temporary and final support obligations — administrative procedure.
40-5-226. Administrative hearing — nature — place — time — determinations — failure to appear — entry of final decision and order.
40-5-227. Filing and docketing of final orders — orders effective as district court decrees.
40-5-228 through 40-5-230 reserved.
40-5-231. Jurisdiction and venue.
40-5-232. Establishment of paternity — notice of paternity determination — contents.
40-5-233. Establishment of paternity — administrative hearing — subpoena — compulsory blood testing.

40-5-234. Paternity blood tests — use of expert's affidavit — effect of test results.
40-5-235. Effect of order establishing paternity — birth records — relief from order.
40-5-236. Referral of paternity issue to district court — record — parties — exclusion of other matters — fees.
40-5-237. District court paternity proceedings — objection to tests — additional tests.
40-5-238 through 40-5-240 reserved.
40-5-241. Repealed.
40-5-242. Notice of support lien — civil liability upon failure to honor support lien or to comply with warrant for distraint.
40-5-243. Release of excess to obligor.
40-5-244. Banks and savings and loan associations — service effective only as to branch office served.
40-5-245. Repealed.
40-5-246. Repealed.
40-5-247. Warrant for distraint — effect — satisfaction of support lien — redemption.
40-5-248. Lien against real and personal property — effect of lien — interest — warrant for distraint.
40-5-249 and 40-5-250 reserved.
40-5-251. Debt payment schedule.
40-5-252. Interest on debts due — waiver.
40-5-253. Administrative findings and order — administrative remedies — judicial review.
40-5-254. Statutory limitations.
40-5-255. Charging off child support debts as uncollectible.
40-5-256. Employee debtor rights protected — limitation.
40-5-257. Assignment of earnings to be honored — effect.
40-5-258 through 40-5-260 reserved.
40-5-261. Procedures for making information available to consumer reporting agencies.
40-5-262. Rules.
40-5-263. Central clearinghouse — interstate enforcement services — powers and duties of the department.
40-5-264. Cooperative agreements.
40-5-265 through 40-5-270 reserved.
40-5-271. Registration of support orders.
40-5-272. Application for review of child support orders.
40-5-273. Administrative review of child support orders — modifying orders.
40-5-274. Child support payments to follow the child.

Part 3 — Child Support Income Deduction

40-5-301. Short title.
40-5-302. Purpose.
40-5-303. Petition for income deduction — who may initiate.
40-5-304. When child support payments considered delinquent.
40-5-305. Notice.
40-5-306. Discharge of delinquency.
40-5-307. Delinquency of child support denied — hearing.
40-5-308. Order for deduction from income for child support payments.
40-5-309. Amount to be deducted from income.
40-5-310. Priority of income deduction.
40-5-311. Remedy not exclusive.
40-5-312 through 40-5-314 reserved.
40-5-315. Immediate income deductions.

Part 4 — Child Support Enforcement Act Administrative Income Withholding

40-5-401. Short title.
40-5-402. Purpose — applicability.
40-5-403. Definitions.
40-5-404. Other remedies available.
40-5-405. Rulemaking authority.
40-5-406 through 40-5-410 reserved.

40-5-411. Immediate income withholding.
40-5-412. Delinquency income withholding.
40-5-413. Notice of intent to withhold income.
40-5-414. Hearing.
40-5-415. Order to withhold income — rules.
40-5-416. Determination of amount of income to be withheld.
40-5-417. Modification or termination of withholding orders.
40-5-418. Payment records.
40-5-419 and 40-5-420 reserved.
40-5-421. Duties of payor.
40-5-422. Obligor rights protected — penalties.
40-5-423. Priority of income withholding.
40-5-424. Civil liability for failure to comply with income withholding order.
40-5-425. Repealed.
40-5-426 through 40-5-430 reserved.
40-5-431. Registration of interstate income withholding orders.
40-5-432. Application for interstate withholding.
40-5-433. Additional duties of department in interstate income withholding.
40-5-434. Initiation of income withholding in other jurisdictions.
40-5-435 through 40-5-439 reserved.
40-5-440. Health insurance coverage — order of enrollment.
40-5-441. Liability of payor — penalties.
40-5-442. Health insurance coverage — notice of intent to purchase.
40-5-443. Payors to provide information — exemption from liability.

Part 5 reserved

Part 6 — Civil Contempt for Nonsupport

40-5-601. Failure to pay support — civil contempt.

Part 7 — Suspension of Licenses for Nonsupport

40-5-701. Definitions.
40-5-702. Notice of intent to suspend license.
40-5-703. Hearing — order suspending license.
40-5-704. Suspension, denial, and nonrenewal of licenses.
40-5-705 through 40-5-708 reserved.
40-5-709. Nondisciplinary suspension for failure to pay child support.
40-5-710. Stay of suspension of license — payment plan — hardship.
40-5-711. Termination of order to suspend license.
40-5-712. Fees.
40-5-713. Rulemaking authority.

Part 1
Uniform Interstate Family Support Act

Part Cross-References

When action not abated by death or other disability, 27-1-501.

Duties of husband and wife as to support, 40-2-102.

Support of spouse, 40-2-103.

Child support, 40-4-204.

Registration and enforcement of interstate income withholding orders, 40-5-431 through 40-5-434.

40-5-101. Short title. This part may be cited as the “Uniform Interstate Family Support Act”.

History: En. Sec. 42, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-82; amd. Sec. 1, Ch. 328, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 328 substituted "Uniform Interstate Family Support Act" for "Revised Uniform Reciprocal Enforcement of Support Act (1968)".

40-5-102. Repealed. Sec. 58, Ch. 328, L. 1993.

History: En. Sec. 1, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-41.

40-5-103. Definitions. (1) "Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a child support order directed to the parent.

(2) "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.

(3) "Duty of support":

(a) means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse; and

(b) includes an unsatisfied obligation to provide support.

(4) "Governor" includes an individual performing the functions of governor or the executive authority of any state covered by this part.

(5) "Home state" means the state in which a child lived with a parent or a person acting as parent for at least 6 consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than 6 months old, the state in which the child lived from birth with a parent or person acting as parent. A period of temporary absence of a parent or person acting as parent is counted as part of the 6-month or other period.

(6) "Income" includes:

(a) earnings or other periodic entitlements to money from any source; and

(b) any other property subject to withholding for support under the law of this state.

(7) "Income-withholding order" means an order or other legal process directed to an obligor's employer, as provided in Title 40, chapter 5, parts 3 and 4, or by a tribunal of another state to withhold support from the income of the obligor.

(8) "Initiating state" means a state in which a proceeding pursuant to this part or a law substantially similar to this part, the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, or a proceeding initiated by the department of social and rehabilitation services under 40-5-263 is filed for forwarding to a responding state.

(9) "Initiating tribunal" means the authorized tribunal in an initiating state.

(10) "Issuing state" means the state in which a tribunal issues a support order or renders a judgment determining parentage.

(11) "Issuing tribunal" means the tribunal that issues a support order or renders a judgment determining parentage.

(12) "Law" includes decisional and statutory law and rules and regulations having the force of law.

(13) "Obligee" means:

(a) an individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;

(b) a state or political subdivision to which the rights under a duty of support or a support order have been assigned or that has independent claims based on financial assistance provided to an individual obligee; or

(c) an individual seeking a judgment determining parentage of that individual's child.

(14) "Obligor" means an individual or the estate of a decedent:

(a) who owes or is alleged to owe a duty of support;

(b) who is alleged but has not been adjudicated to be a parent of a child; or

(c) who is liable under a support order.

(15) "Prosecuting attorney" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.

(16) "Register" means to file a support order or judgment determining parentage in the registry of foreign support orders.

(17) "Registering tribunal" means a tribunal in which a support order is registered.

(18) "Responding state" means a state to which a proceeding is forwarded under this part or a law substantially similar to this part, the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, or a proceeding initiated by the department of social and rehabilitation services under 40-5-263.

(19) "Responding tribunal" means the authorized tribunal in a responding state.

(20) "Spousal support order" means a support order for a spouse or former spouse of the obligor.

(21) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States. The term "state" includes an Indian tribe and includes a foreign jurisdiction that has established procedures for issuance and enforcement of support orders that are substantially similar to the procedures under this part.

(22) (a) "Support enforcement agency" means a public official or agency authorized to seek:

(i) enforcement of support orders or laws relating to the duty of support;

(ii) establishment or modification of child support;

(iii) a determination of parentage; or

(iv) to locate obligors or their assets.

(b) Support enforcement agency includes:

(i) in cases brought under title IV-D of the Social Security Act, the department of social and rehabilitation services; and

(ii) in all other cases, the prosecuting attorney.

(23) "Support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, that is for the benefit of a child, a spouse or a former spouse, or a state or political subdivision; that provides for

monetary support, health care, arrearages, or reimbursement; and that may include related costs and fees, interest, income withholding, attorney fees, and other relief.

(24) "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage.

History: En. Sec. 2, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-42; amd. Sec. 2, Ch. 328, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 328 inserted definitions of child, child support order, home state, income, income-withholding order, issuing state, issuing tribunal, spousal support order, support enforcement agency, and tribunal; deleted definition of court that read: ""Court" means the district court of this state and, when the context requires, means the court of any other state as defined in substantially similar reciprocal law"; in definition of duty of support, after "means", substituted "an obligation" for "a duty of support whether" and after "law" substituted "to provide support for a child, spouse, or former spouse; and (b) includes an unsatisfied obligation to provide support" for "or by order, decree, or judgment of any court, whether interlocutory or final, or whether incidental to an action for divorce, separation, separate maintenance, or otherwise and includes the duty to pay arrearages of support past due and unpaid"; in definition of Governor, after "includes", substituted "an individual" for "any person"; substituted definition of initiating state for former definition that read: ""Initiating state" means a state in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced"; substituted definition of initiating tribunal for definition of initiating court that read: ""Initiating court" means the court in which a proceeding is commenced"; in definition of law, after "includes", substituted "decisional" for "both common" and after "statutory law" inserted "and rules and regulations having the force of law"; substituted definition of obligee for former definition that read: ""Obligee" means a person, including a state or political subdivision, to whom a duty of support is owed or a person, including a state or political subdivision, that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance"; substituted definition of obligor for former definition that read: ""Obligor" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced"; in definition of register, after "file", inserted "a support order or judgment determining parentage"; substituted definition of registering tribunal for definition of registering court that read: ""Registering court" means any court of this state in which a support order of a rendering state is registered"; substituted definition of responding state for definition of rendering state that read: ""Rendering state" means a state in which the court has issued a support order for which registration is sought or granted in the court of another state"; substituted definition of responding tribunal for definition of responding court that read: ""Responding court" means the court in which the responsive proceeding is commenced"; deleted former definition of responding state that read: ""Responding state" means a state in which any responsive proceeding pursuant to the proceeding in the initiating state is commenced"; substituted definition of state for former definition that read: ""State" includes a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect"; substituted definition of support order for former definition that read: ""Support order" means any judgment, decree, or order of support in favor of an obligee whether temporary or final or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered"; and made minor changes in style.

40-5-104. Renumbered 40-5-144 by Code Commissioner, 1993.

40-5-105. Repealed. Sec. 58, Ch. 328, L. 1993.

History: En. Sec. 4, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-44.

40-5-106. Renumbered 40-5-153 by Code Commissioner, 1993.

40-5-107. Renumbered 40-5-154 by Code Commissioner, 1993.

40-5-108 through 40-5-114. Repealed. Sec. 58, Ch. 328, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

40-5-108. En. Sec. 7, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-47.

40-5-109. En. Sec. 8, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-48.

40-5-110. En. Sec. 9, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-49.

40-5-111. En. Sec. 10, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-50.

40-5-112. En. Sec. 11, Ch. 237, L. 1969; amd. Sec. 6, Ch. 379, L. 1977; R.C.M. 1947, 93-2601-51; amd. Sec. 3, Ch. 33, L. 1979; amd. Sec. 27, Ch. 609, L. 1987.

40-5-113. En. Sec. 12, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-52; amd. Sec. 1, Ch. 189, L. 1981; amd. Sec. 28, Ch. 609, L. 1987; amd. Sec. 21, Ch. 702, L. 1989.

40-5-114. En. Sec. 13, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-53.

40-5-115. Renumbered 40-5-161 by Code Commissioner, 1993.

40-5-116. Repealed. Sec. 58, Ch. 328, L. 1993.

History: En. Sec. 15, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-55.

40-5-117. Repealed. Sec. 58, Ch. 328, L. 1993.

History: En. Sec. 16, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-56.

40-5-118. Renumbered 40-5-165 by Code Commissioner, 1993.

40-5-119. Renumbered 40-5-166 by Code Commissioner, 1993.

40-5-120 through 40-5-132. Repealed. Sec. 58, Ch. 328, L. 1993.

Compiler's Comments

Histories of Repealed Sections:

40-5-120. En. Sec. 19, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-59.

40-5-121. En. Sec. 20, Ch. 237, L. 1969; amd. Sec. 24, Ch. 33, L. 1977; R.C.M. 1947, 93-2601-60.

40-5-122. En. Sec. 21, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-61.

40-5-123. En. Sec. 22, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-62.

40-5-124. En. Sec. 23, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-63.

40-5-125. En. Sec. 24, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-64; amd. Sec. 2, Ch. 532, L. 1985.

40-5-126. En. Sec. 25, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-65.

40-5-127. En. Sec. 26, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-66.

40-5-128. En. Sec. 27, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-67.

40-5-129. En. Sec. 28, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-68.

40-5-130. En. Sec. 29, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-69.

40-5-131. En. Sec. 30, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-70; amd. Sec. 4, Ch. 33, L. 1979.

40-5-132. En. Sec. 31, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-71.

40-5-133. Renumbered 40-5-183 by Code Commissioner, 1993.

40-5-134. Repealed. Sec. 58, Ch. 328, L. 1993.

History: En. Sec. 33, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-73.

40-5-135. Repealed. Sec. 58, Ch. 328, L. 1993.

History: En. Sec. 34, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-74.

40-5-136. Repealed. Sec. 58, Ch. 328, L. 1993.

History: En. Sec. 35, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-75.

40-5-137. Renumbered 40-5-184 by Code Commissioner, 1993.

40-5-138. Repealed. Sec. 58, Ch. 328, L. 1993.

History: En. Sec. 37, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-77.

40-5-139. Repealed. Sec. 58, Ch. 328, L. 1993.

History: En. Sec. 38, Ch. 237, L. 1969; amd. Sec. 48, Ch. 121, L. 1974; R.C.M. 1947, 93-2601-78; amd. Sec. 29, Ch. 609, L. 1987.

40-5-140. Renumbered 40-5-185 by Code Commissioner, 1993.

40-5-141. Renumbered 40-5-186 by Code Commissioner, 1993.

40-5-142. Renumbered 40-5-197 by Code Commissioner, 1993.

40-5-143. Tribunals of this state. The district courts and the department of social and rehabilitation services are the tribunals of this state.

History: En. Sec. 3, Ch. 328, L. 1993.

40-5-144. Remedies cumulative. Remedies provided in this part are cumulative and do not affect the availability of remedies under other law.

History: En. Sec. 3, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-43; amd. Sec. 4, Ch. 328, L. 1993; Sec. 40-5-104, MCA 1991; redes. 40-5-144 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 328 substituted current language concerning cumulative remedies for "The remedies herein provided are in addition to and not in substitution for any other remedies."

Cross-References

What acts or omissions are contempts, 3-1-501.

Warnings of withholding procedures, 40-4-204.

Payment of maintenance or support to court, 40-4-206.

Assignments, 40-4-207.

Security or guaranty to secure support. 40-4-209.

Remedy when parent dies without providing for support, 40-6-213.

Nonsupport, 45-5-621.

Endangering the welfare of children, 45-5-622.

40-5-145. Bases for jurisdiction over nonresident. In a proceeding to establish, enforce, or modify a support order or to determine parentage, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

(1) the individual is personally served with notice within this state;

(2) the individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;

(3) the individual resided with the child in this state;

(4) the individual resided in this state and provided prenatal expenses or support for the child;

(5) the child resides in this state as a result of the acts or directives of the individual;

(6) the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse; or

(7) there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

History: En. Sec. 5, Ch. 328, L. 1993.

40-5-146. Procedure when exercising jurisdiction over nonresident. A tribunal of this state exercising personal jurisdiction over a nonresident pursuant to 40-5-145 may apply 40-5-175 to receive evidence from another state and 40-5-177 to obtain discovery through a tribunal of another state. In all other respects, 40-5-158 through 40-5-166, 40-5-170 through 40-5-180, and 40-5-183 through 40-5-186 do not apply and the tribunal shall apply the procedural and substantive law of this state, including the rules on choice of law other than those established by this part.

History: En. Sec. 6, Ch. 328, L. 1993.

40-5-147. Initiating and responding tribunal of this state. Under this part, a tribunal of this state may serve as an initiating tribunal to forward proceedings to another state and as a responding tribunal for proceedings initiated in another state.

History: **En. Sec. 7, Ch. 328, L. 1993.**

40-5-148. Simultaneous proceedings in another state. (1) A tribunal of this state may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a petition or comparable pleading is filed in another state only if:

(a) the petition or comparable pleading in this state is filed before the expiration of the time allowed in the other state for filing a responsive pleading challenging the exercise of jurisdiction by the other state;

(b) the contesting party timely challenges the exercise of jurisdiction in the other state; and

(c) if relevant, this state is the home state of the child.

(2) A tribunal of this state may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state if:

(a) the petition or comparable pleading in the other state is filed before the expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of jurisdiction by this state;

(b) the contesting party timely challenges the exercise of jurisdiction in this state; and

(c) if relevant, the other state is the home state of the child.

History: **En. Sec. 8, Ch. 328, L. 1993.**

40-5-149. Continuing, exclusive jurisdiction. (1) A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a child support order:

(a) as long as this state remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

(b) until each individual party has filed written consent with the tribunal of this state for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

(2) A tribunal of this state issuing a child support order consistent with the law of this state may not exercise its continuing jurisdiction to modify the order if the order has been modified by a tribunal of another state pursuant to a law substantially similar to this part.

(3) If a child support order of this state is modified by a tribunal of another state pursuant to a law substantially similar to this part, a tribunal of this state loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this state and may only:

(a) enforce the order that was modified as to amounts accruing before the modification;

(b) enforce nonmodifiable aspects of that order; and

(c) provide other appropriate relief for violations of that order that occurred before the effective date of the modification.

(4) A tribunal of this state shall recognize the continuing, exclusive jurisdiction of a tribunal of another state that has issued a child support order pursuant to a law substantially similar to this part.

(5) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

(6) A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A tribunal of this state may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state.

History: En. Sec. 9, Ch. 328, L. 1993.

40-5-150. Enforcement and modification of support order by tribunal having continuing jurisdiction. (1) A tribunal of this state may serve as an initiating tribunal to request a tribunal of another state to enforce or modify a support order issued in that state.

(2) A tribunal of this state that has continuing, exclusive jurisdiction over a support order may act as a responding tribunal to enforce or modify the order of another state. If a party subject to the continuing, exclusive jurisdiction of the tribunal no longer resides in the issuing state, in subsequent proceedings the tribunal may apply 40-5-175 to receive evidence from another state and 40-5-177 to obtain discovery through a tribunal of another state.

(3) A tribunal of this state that lacks continuing, exclusive jurisdiction over a spousal support order may not serve as a responding tribunal to modify a spousal support order of another state.

History: En. Sec. 10, Ch. 328, L. 1993.

40-5-151. Recognition of child support orders. (1) If a proceeding is brought under this part and one or more child support orders have been issued in this or another state with regard to an obligor and a child, a tribunal of this state shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction:

(a) If only one tribunal has issued a child support order, the order of that tribunal must be recognized.

(b) If two or more tribunals have issued child support orders for the same obligor and child and only one of the tribunals would have continuing, exclusive jurisdiction under this part, the order of that tribunal must be recognized.

(c) If two or more tribunals have issued child support orders for the same obligor and child and more than one of the tribunals would have continuing, exclusive jurisdiction under this part, an order issued by a tribunal in the current home state of the child must be recognized. However, if an order has not been issued in the current home state of the child, the order most recently issued must be recognized.

(d) If two or more tribunals have issued child support orders for the same obligor and child and none of the tribunals would have continuing, exclusive jurisdiction under this part, the tribunal of this state may issue a child support order, which must be recognized.

(2) The tribunal that has issued an order recognized under subsection (1) is the tribunal having continuing, exclusive jurisdiction.

History: **En. Sec. 11, Ch. 328, L. 1993.**

40-5-152. Multiple child support orders for two or more obligees. In responding to multiple registrations or petitions for enforcement of two or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which orders was issued by a tribunal of another state, a tribunal of this state shall enforce those orders in the same manner as if the multiple orders had been issued by a tribunal of this state.

History: **En. Sec. 12, Ch. 328, L. 1993.**

40-5-153. Grounds for rendition. (1) The governor of this state may:

(a) demand of the governor of another state the surrender of an individual found in the other state who is charged criminally in this state with failing to provide for the support of an obligee; or

(b) on demand by the governor of another state, surrender an individual found in this state who is charged criminally in that state with failing to provide for the support of an obligee.

(2) A provision for extradition of individuals that is not inconsistent with this part applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled from the demanding state.

History: **En. Sec. 5, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-45; amd. Sec. 13, Ch. 328, L. 1993; Sec. 40-5-106, MCA 1991; redes. 40-5-153 by Code Commissioner, 1993.**

Compiler's Comments

1993 Amendment: Chapter 328 in (2), in first sentence after "extradition of", substituted "individuals" for "criminals" and deleted second sentence providing that a demand, oath, and extradition proceeding need not show that the person has fled from justice or was in the demanding state at the time of the commission of the alleged crime; and made minor changes in style.

Cross-References

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

Nonsupport, 45-5-621.

Uniform Criminal Extradition Act, Title 46, ch. 30.

40-5-154. Conditions of rendition. (1) Before making a demand that the governor of another state surrender an individual charged criminally in this state with having failed to provide for the support of a child or to pay support to an obligee, the governor of this state may require any prosecuting attorney of this state to demonstrate:

(a) that at least 60 days previously, the obligee had initiated proceedings for support pursuant to this part; or

(b) that the proceeding would be of no avail.

(2) If, under this part or a law substantially similar to this part, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act, the governor of another state makes a demand that the governor of this state surrender an individual charged criminally in that state with having failed to provide for the support of a child or to pay support to an obligee, the governor of this state may require a prosecuting attorney to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a

proceeding would be effective but has not been initiated, the governor of this state may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(3) If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the governor of this state may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the governor of this state may decline to honor the demand if the individual is complying with the support order.

History: En. Sec. 6, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-46; amd. Sec. 14, Ch. 328, L. 1993; Sec. 40-5-107, MCA 1991; redes. 40-5-154 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 328 in (1) and (2), after "support of", substituted "a child or to pay support to an obligee" for "a person"; in (2) inserted references to the Uniform Reciprocal Enforcement of Support Act and Revised Uniform Reciprocal Enforcement of Support Act; in (3) substituted "petitioner" for "obligee"; and made minor changes in style.

Cross-References

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

Nonsupport, 45-5-621.

Uniform Criminal Extradition Act, Title 46, ch. 30.

40-5-155 through 40-5-157 reserved.

40-5-158. Proceedings under this part. (1) Except as otherwise provided in this part, 40-5-158 through 40-5-166, 40-5-170 through 40-5-178, 40-5-180, and 40-5-183 apply to all proceedings under this part.

(2) This part provides for the following proceedings:

(a) establishment of an order for spousal support or child support pursuant to 40-5-179;

(b) enforcement of a support order and income-withholding order of another state without registration;

(c) registration of an order for spousal support or child support of another state for enforcement pursuant to 40-5-184 through 40-5-195;

(d) modification of an order for child support or spousal support issued by a tribunal of this state pursuant to 40-5-147 through 40-5-150;

(e) registration of an order for child support of another state for modification pursuant to 40-5-184 through 40-5-195;

(f) determination of parentage pursuant to 40-5-196; and

(g) assertion of jurisdiction over nonresidents pursuant to 40-5-145 and 40-5-146.

(3) If the tribunal is the department of social and rehabilitation services, this part includes the administrative remedies under this chapter.

(4) An individual or a support enforcement agency may commence a proceeding authorized under this part by filing a petition in an appropriate initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state that has or can obtain personal jurisdiction over the respondent.

History: En. Sec. 15, Ch. 328, L. 1993.

40-5-159. Action by a minor parent. A minor parent or the guardian or other legal representative of a minor parent may maintain a proceeding on behalf of or for the benefit of the minor's child.

History: En. Sec. 16, Ch. 328, L. 1993.

40-5-160. Application of law of this state. Except as otherwise provided by this part, a responding tribunal of this state:

(1) shall apply the procedural and substantive law, including the rules on choice of law, generally applicable to similar proceedings originating in this state and may exercise all powers and provide all remedies available in those proceedings; and

(2) shall determine the duty of support and the amount payable in accordance with the law and support guidelines of this state.

History: En. Sec. 17, Ch. 328, L. 1993.

40-5-161. Duties of initiating tribunal. (1) Upon the filing of a petition authorized by this part, an initiating tribunal shall forward three copies of the petition and its accompanying documents:

(a) to the responding tribunal or appropriate support enforcement agency in the responding state; or

(b) if the identity of the responding tribunal is unknown, to the state information agency of the responding state, with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

(2) The department of social and rehabilitation services is the initiating tribunal for any action or proceeding that may be brought under Title 40, chapter 5, parts 2, 4, and 5. In all other cases, the district court is the initiating tribunal.

History: En. Sec. 14, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-54; amd. Sec. 18, Ch. 328, L. 1993; Sec. 40-5-115, MCA 1991; redes. 40-5-161 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 328 substituted language regarding duties of initiating tribunal for former section that read: "If the initiating court finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding state may obtain jurisdiction of the obligor or his property, it shall so certify and cause three copies of the petition and its certificate and one copy of this part to be sent to the responding court. Certification shall be in accordance with the requirements of the initiating state. If the name and address of the responding court is unknown and the responding state has an information agency comparable to that established in the initiating state, it shall cause the copies to be sent to the state information agency or other proper official of the responding state, with a request that the agency or official forward them to the proper court and that the court of the responding state acknowledge their receipt to the initiating court."

Cross-References

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

40-5-162. Duties and powers of responding tribunal. (1) When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly pursuant to 40-5-158(4), it shall cause the petition or pleading to be filed and notify the petitioner by first-class mail where and when it was filed.

(2) A responding tribunal of this state, to the extent otherwise authorized by law, may do one or more of the following:

(a) issue or enforce a support order, modify a child support order, or render a judgment to determine parentage;

(b) order an obligor to comply with a support order, specifying the amount and the manner of compliance;

(c) order income withholding;

(d) determine the amount of any arrearages and specify a method of payment;

(e) enforce orders by use of civil or criminal contempt, or both;

(f) set aside property for satisfaction of the support order;

(g) place liens and order execution on the obligor's property;

(h) order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment, and telephone number at the place of employment;

(i) issue a bench warrant for an obligor who has failed, after proper notice, to appear at a hearing ordered by the tribunal and enter the bench warrant in any local and state computer systems for criminal warrants;

(j) order the obligor to seek appropriate employment by specified methods;

(k) award reasonable attorney fees and other fees and costs; and

(l) grant any other available remedy.

(3) A responding tribunal of this state shall include in a support order issued under this part or in the documents accompanying the order the calculations on which the support order is based.

(4) A responding tribunal of this state may not condition the payment of a support order issued under this part upon a party's compliance with visitation provisions.

(5) If a responding tribunal of this state issues an order under this part, the tribunal shall send a copy of the order by first-class mail to the petitioner and the respondent and to the initiating tribunal, if any.

(6) The department of social and rehabilitation services is the responding tribunal for receipt of a petition or comparable proceedings from an initiating state as provided in 40-5-263. In all other cases, the district court is the responding tribunal.

History: En. Sec. 19, Ch. 328, L. 1993.

40-5-163. Inappropriate tribunal. If a petition or comparable pleading is received by an inappropriate tribunal of this state, it shall forward the pleading and accompanying documents to an appropriate tribunal in this state or another state and notify the petitioner by first-class mail where and when the pleading was sent.

History: En. Sec. 20, Ch. 328, L. 1993.

40-5-164. Duties of support enforcement agency. (1) A support enforcement agency of this state, upon application, shall provide services to a petitioner in a proceeding under this part.

(2) A support enforcement agency that is providing services to the petitioner shall, as appropriate:

(a) take all steps necessary to enable an appropriate tribunal in this state or another state to obtain jurisdiction over the respondent;

(b) request an appropriate tribunal to set a date, time, and place for a hearing;

(c) make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;

(d) after receipt of a written notice from an initiating, responding, or registering tribunal, promptly send a copy of the notice by first-class mail to the petitioner;

(e) after receipt of a written communication from the respondent or the respondent's attorney, promptly send a copy of the communication by first-class mail to the petitioner; and

(f) notify the petitioner if jurisdiction over the respondent cannot be obtained.

(3) This part does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

(4) For purposes of this part, the department of social and rehabilitation services is the support enforcement agency for this state as provided in Title 40, chapter 5, parts 2, 4, and 5. All the provisions of this part must be interpreted as supplemental to and cumulative with the department's powers and duties under those provisions. In all other cases, the county attorney in the county in which an action must be filed is the support enforcement agency.

History: En. Sec. 21, Ch. 328, L. 1993.

40-5-165. Duties of state information agency. (1) The department of social and rehabilitation services is designated as the state information agency under this part.

(2) The department shall:

(a) compile and maintain a current list, including addresses, of the tribunals in this state that have jurisdiction under this part and of any support enforcement agencies in this state and transmit a copy to the state information agency of every other state;

(b) maintain a register of tribunals and support enforcement agencies of other states;

(c) forward to the appropriate tribunal in the place in this state in which the individual obligee or the obligor resides or in which the obligor's property is believed to be located all documents concerning a proceeding under this part received from an initiating tribunal or the state information agency of the initiating state; and

(d) obtain information concerning the location of the obligor and the obligor's property within this state not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses, and social security.

History: En. Sec. 17, Ch. 237, L. 1969; amd. Sec. 48, Ch. 121, L. 1974; R.C.M. 1947, 93-2601-57; amd. Sec. 22, Ch. 328, L. 1993; Sec. 40-5-118, MCA 1991; redes. 40-5-165 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 328 substituted language regarding duties of state information agency for former section that read: "(1) The state department of social and rehabilitation services is designated as the state information agency under this part.

(2) It shall:

(a) compile a list of the courts and their addresses in this state having jurisdiction under this part and transmit it to the state information agency of every other state which has adopted this or a substantially similar law. Upon the adjournment of each session of the legislature the agency shall distribute copies of any amendments to this part and a statement of their effective date to all other state information agencies.

(b) maintain a register of lists of courts received from other states and transmit copies thereof promptly to every court in this state having jurisdiction under this part; and

(c) forward to the court in this state which has jurisdiction over the obligor or his property petitions, certificates, and copies of the reciprocal enforcement of support act it receives from courts or information agencies of other states.

(3) If the state information agency does not know the location of the obligor or his property in the state and no state location service is available, it shall use all means at its disposal to obtain this information, including the examination of official records in the state and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made to the tax offices both state and federal where such offices are able to cooperate, and requests made to the social security administration as permitted by the Social Security Act, as amended.

(4) After the deposit of three copies of the petition and certificate and one copy of the reciprocal enforcement of support act of the initiating state with the clerk of the appropriate court, if the state information agency knows or believes that the prosecuting attorney is not prosecuting the case diligently, it shall inform the attorney general who may undertake the representation."

Cross-References

Powers and duties of Department of Social and Rehabilitation Services, 53-2-201.

40-5-166. Duty of attorney general. If the attorney general determines that a support enforcement agency is neglecting or refusing to provide services to an individual, the attorney general may order the agency to perform its duties under this part or may provide those services directly to the individual.

History: En. Sec. 18, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-58; amd. Sec. 23, Ch. 328, L. 1993; Sec. 40-5-119, MCA 1991; redes. 40-5-166 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 328 substituted language concerning duty of Attorney General for former section that read: "(1) After the responding court receives copies of the petition, certificate, and reciprocal enforcement of support act from the initiating court, the clerk of the court shall docket the case and notify the prosecuting attorney of his action.

(2) The prosecuting attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this state to enable the court to obtain jurisdiction over the obligor or his property and shall request the court to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.

(3) If the prosecuting attorney neglects or refuses to represent the obligee, the attorney general may order him to comply with the request of the court or may undertake the representation."

Cross-References

Attorney General — general duties, 2-15-501.

Docket, 3-5-508.

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

40-5-167 through 40-5-169 reserved.

40-5-170. Private counsel. An individual may employ private counsel to represent the individual in proceedings authorized by this part.

History: En. Sec. 24, Ch. 328, L. 1993.

40-5-171. Pleadings and accompanying documents. (1) A petitioner who seeks to establish or modify a support order or to determine parentage in a proceeding under this part shall verify the petition. Unless otherwise ordered under 40-5-172, the petition or accompanying documents must provide, so far as known, the name, residential address, and social security numbers of the obligor and the obligee and the name, sex, residential address, social security number, and date of birth of each child for whom support is sought. The petition must be accompanied by a certified copy of any support order in effect. The petition may include any other information that may assist in locating or identifying the respondent.

(2) The petition must specify the relief sought. The petition and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.

History: En. Sec. 25, Ch. 328, L. 1993.

40-5-172. Nondisclosure of information in exceptional circumstances. Upon a finding, which may be made ex parte, that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information or if an existing order so provides, a tribunal shall order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under this part.

History: En. Sec. 26, Ch. 328, L. 1993.

40-5-173. Costs and fees. (1) The petitioner may not be required to pay a filing fee or other costs to initiate a proceeding under this part.

(2) If an obligee prevails, a responding tribunal may assess against an obligor the filing fees, reasonable attorney fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. Except as provided by other law, the tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state. Attorney fees may be taxed as costs and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of current support owed to the obligee has priority over fees, costs, and expenses.

(3) The tribunal shall order the payment of costs and reasonable attorney fees if it determines that a hearing was requested primarily for delay. In a proceeding under 40-5-184 through 40-5-195 or 40-5-271, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

(4) The standardized schedule of fees established by the department of social and rehabilitation services under 40-5-210 is conclusive in any action under this section. Any fees or costs recoverable under subsection (2) that are not included in the standardized schedules are recoverable under subsection (2).

History: En. Sec. 27, Ch. 328, L. 1993.

40-5-174. Nonparentage as defense — limitation. A party whose parentage of a child has been previously determined pursuant to law may not plead nonparentage as a defense to a proceeding under this part.

History: En. Sec. 28, Ch. 328, L. 1993.

40-5-175. Special rules of evidence and procedure. (1) The physical presence of the petitioner in a responding tribunal of this state is not required for the establishment, enforcement, or modification of a support order or for the rendition of a judgment determining parentage.

(2) A verified petition, affidavit, or document substantially complying with federally mandated forms and a document incorporated by reference in

any of them, not excluded under the hearsay rule if given in person, is admissible in evidence if given under oath by a party or witness residing in another state.

(3) A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it and is admissible to show whether payments were made.

(4) Copies of bills for testing for parentage and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least 10 days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.

(5) Documentary evidence transmitted from another state to a tribunal of this state by telephone, telecopier, or other means that do not provide an original writing may not be excluded from evidence on an objection based on the means of transmission.

(6) In a proceeding under this part, a tribunal of this state may permit a party or witness residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means at a designated tribunal or other location in that state. A tribunal of this state shall cooperate with tribunals of other states in designating an appropriate location for the deposition or testimony.

(7) If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

(8) A privilege against disclosure of communications between spouses does not apply in a proceeding under this part.

(9) The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this part.

History: En. Sec. 29, Ch. 328, L. 1993.

40-5-176. Communications between tribunals. A tribunal of this state may communicate, in writing or by telephone or other means, with a tribunal of another state to obtain information concerning the laws of that state; the legal effect of a judgment, decree, or order of that tribunal; and the status of a proceeding in the other state. A tribunal of this state may furnish similar information by similar means to a tribunal of another state.

History: En. Sec. 30, Ch. 328, L. 1993.

40-5-177. Assistance with discovery. A tribunal of this state may:

(1) request a tribunal of another state to assist in obtaining discovery; and

(2) upon request, compel a person over whom it has jurisdiction to respond to a discovery order issued by a tribunal of another state.

History: En. Sec. 31, Ch. 328, L. 1993.

40-5-178. Receipt and disbursement of payments. A support enforcement agency or tribunal of this state shall disburse promptly any amounts received pursuant to a support order as directed under this part. The agency or tribunal shall furnish to a requesting party or tribunal of another state a certified statement by the custodian of the record of the amounts and dates of all payments received.

History: **En. Sec. 32, Ch. 328, L. 1993.**

40-5-179. Petition to establish support order. (1) If a support order entitled to recognition under this part has not been issued, an appropriate responding tribunal of this state may issue a support order if:

(a) the individual seeking the order resides in another state; or

(b) the support enforcement agency seeking the order is located in another state.

(2) The tribunal may issue a temporary child support order if:

(a) the respondent has signed a verified statement acknowledging parentage;

(b) the respondent has been determined by or pursuant to law to be the parent; or

(c) there is other clear and convincing evidence that the respondent is the child's parent.

(3) Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to 40-5-162.

History: **En. Sec. 33, Ch. 328, L. 1993.**

40-5-180. Administrative enforcement of orders. (1) A party seeking to enforce a support order or an income-withholding order, or both, issued by a tribunal of another state may send the documents required for registering the order to a support enforcement agency of this state.

(2) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this state to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this part.

History: **En. Sec. 34, Ch. 328, L. 1993.**

40-5-181 and 40-5-182 reserved.

40-5-183. Limited immunity of petitioner. (1) Participation by a petitioner in a proceeding before a responding tribunal, whether in person, by private attorney, or through services provided by a support enforcement agency, does not confer jurisdiction over the petitioner in another proceeding.

(2) A petitioner is not amenable to service of civil process while physically present in this state to participate in a proceeding under this part.

(3) The immunity granted by this section does not extend to civil litigation based on acts that are unrelated to a proceeding under this part and that are committed by a party while present in this state to participate in the proceeding.

History: **En. Sec. 32, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-72; amd. Sec. 35, Ch. 328, L. 1993; Sec. 40-5-133, MCA 1991; redes. 40-5-183 by Code Commissioner, 1993.**

Compiler's Comments

1993 Amendment: Chapter 328 substituted language concerning limited immunity of petitioner for former section that read: "Participation in any proceeding under this part does not confer jurisdiction upon any court over any of the parties thereto in any other proceeding."

Cross-References

Jurisdiction of persons, Rule 4B, M.R.Civ.P. (see Title 25, ch. 20).

40-5-184. Registration of order for enforcement. A support order or an income-withholding order issued by a tribunal of another state may be registered in this state for enforcement.

History: En. Sec. 36, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-76; amd. Sec. 36, Ch. 328, L. 1993; Sec. 40-5-137, MCA 1991; redes. 40-5-184 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 328 substituted language concerning registration of order for enforcement for former section that read: "The obligee may register the foreign support order in a court of this state in the manner, with the effect, and for the purposes herein provided."

Cross-References

Register of actions, 3-5-504.

40-5-185. Procedure to register order for enforcement. (1) A support order or income-withholding order of another state may be registered in this state by sending the following documents and information to the department of social and rehabilitation services pursuant to 40-5-263 or to the district court:

(a) a letter of transmittal to the tribunal to request registration and enforcement;

(b) two copies, including one certified copy, of all orders to be registered, including any modification of an order;

(c) a sworn statement by the party seeking registration or a certified statement by the custodian of the records, showing the amount of any arrearages;

(d) the name of the obligor and, if known:

(i) the obligor's address and social security number;

(ii) the name and address of the obligor's employer and any other source of income of the obligor; and

(iii) a description and the location of property of the obligor in this state that is not exempt from execution; and

(e) the name and address of the obligee and, if applicable, the agency or person to whom support payments are to be remitted.

(2) On receipt of a request for registration, the registering tribunal shall cause the order to be filed, together with one copy of the documents and information, regardless of their form.

(3) A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of this state may be filed either at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought.

History: En. Sec. 39, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-79; amd. Sec. 37, Ch. 328, L. 1993; Sec. 40-5-140, MCA 1991; redes. 40-5-185 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 328 substituted language concerning procedure to register order for former section that read: "(1) An obligee seeking to register a foreign support order in a court of this state shall transmit to the clerk of the court:

(a) three certified copies of the order with all modifications thereof;

(b) one copy of the reciprocal enforcement of support act of the state in which the order was made; and

(c) a statement, verified and signed by the obligee, showing the post-office address of the obligee, the last known place of residence and post-office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and a list of the states in which the order is registered.

(2) Upon receipt of these documents the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them in the registry of foreign support orders. The filing constitutes registration under this part.

(3) Promptly upon registration the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the post-office address of the obligee. He shall also docket the case and notify the prosecuting attorney of his action. The prosecuting attorney shall proceed diligently to enforce the order."

Cross-References

General duties of Clerk of the District Court, 3-5-501.

Register of actions, 3-5-504.

Docket, 3-5-508.

Fees of the Clerk of the District Court, 25-1-201.

40-5-186. Effect of registration enforcement. (1) A support order or income-withholding order issued in another state is registered when the order is filed in a registering tribunal of this state.

(2) A registered order issued in another state is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state.

(3) Except as otherwise provided in 40-5-184 through 40-5-195, a tribunal of this state shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction.

History: En. Sec. 40, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-80; amd. Sec. 38, Ch. 328, L. 1993; Sec. 40-5-141, MCA 1991; redes. 40-5-186 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 328 substituted language concerning effect of registration for former section that read: "(1) Upon registration the registered foreign support order shall be treated in the same manner as a support order issued by a court of this state. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this state and may be enforced and satisfied in like manner.

(2) The obligor has 20 days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition, the registered support order is confirmed.

(3) At the hearing to enforce the registered support order, the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted, the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering state. If he shows to the court any ground upon which enforcement of a support order of this state may be stayed, the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this state."

Cross-References

Register of actions, 3-5-504.

Effect of judicial record of another state, 26-3-203.

Effect of foreign judgment, 26-3-205.

40-5-187. Choice of law. (1) The law of the issuing state governs the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrearages under the order.

(2) In a proceeding for arrearages, the statute of limitations under the laws of this state or of the issuing state, whichever is longer, applies.

History: En. Sec. 39, Ch. 328, L. 1993.

40-5-188. Notice of registration of order. (1) When a support order or income-withholding order issued in another state is registered, the registering tribunal shall notify the nonregistering party. Notice must be given by first-class or certified mail or by any means of personal service authorized by the law of this state. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(2) The notice must inform the nonregistering party:

(a) that a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(b) that a hearing to contest the validity or enforcement of the registered order must be requested within 20 days after the date of mailing or personal service of the notice;

(c) that failure to contest the validity or enforcement of the registered order in a timely manner:

(i) will result in confirmation of the order and enforcement of the order and the alleged arrearages; and

(ii) precludes further contest of that order with respect to any matter that could have been asserted; and

(d) of the amount of any alleged arrearages.

(3) Upon registration of an income-withholding order for enforcement, the registering tribunal shall notify the obligor's employer pursuant to Title 40, chapter 5, part 4.

History: En. Sec. 40, Ch. 328, L. 1993.

40-5-189. Procedure to contest validity or enforcement of registered order. (1) A nonregistering party seeking to contest the validity or enforcement of a registered order in this state shall request a hearing within 20 days after the date of mailing or personal service of notice of the registration. The nonregistering party may, pursuant to 40-5-190, seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages.

(2) If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.

(3) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties by first-class mail of the date, time, and place of the hearing.

History: En. Sec. 41, Ch. 328, L. 1993.

40-5-190. Contest of registration or enforcement. (1) A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

(a) the issuing tribunal lacked personal jurisdiction over the contesting party;

(b) the order was obtained by fraud;

(c) the order has been vacated, suspended, or modified by a later order;

(d) the issuing tribunal has stayed the order pending appeal;

(e) there is a defense under the law of this state to the remedy sought;

(f) full or partial payment has been made; or

(g) the statute of limitations under 40-5-187 precludes enforcement of some or all of the arrearages.

(2) If a party presents evidence establishing a full or partial defense under subsection (1), the registering tribunal may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered order may be enforced by all remedies available under the law of this state.

(3) If the contesting party does not establish a defense under subsection (1) to the validity or enforcement of the order, the registering tribunal shall issue an order confirming the order.

History: **En. Sec. 42, Ch. 328, L. 1993.**

40-5-191. Confirmed order. Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

History: **En. Sec. 43, Ch. 328, L. 1993.**

40-5-192. Procedure to register child support order of another state for modification. A party or support enforcement agency seeking to modify or to modify and enforce a child support order issued in another state shall register that order in this state in the same manner provided in 40-5-184 through 40-5-186, 40-5-188, and 40-5-271 if the order has not been registered. A petition for modification may be filed either at the same time as a request for registration or later. The pleading must specify the grounds for modification.

History: **En. Sec. 44, Ch. 328, L. 1993.**

40-5-193. Effect of registration for modification. A tribunal of this state may enforce a child support order of another state, registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this state. However, the registered order may be modified only if the requirements of 40-5-194 have been met.

History: **En. Sec. 45, Ch. 328, L. 1993.**

40-5-194. Modification of child support order of another state. (1) After a child support order issued in another state has been registered in this state, the appropriate responding tribunal of this state may modify that order only if, after notice and hearing, it finds that:

(a) the following requirements are met:

(i) the child, the individual obligee, and the obligor do not reside in the issuing state;

(ii) a petitioner who is a nonresident of this state seeks modification; and

(iii) the respondent is subject to the personal jurisdiction of the tribunal of this state; or

(b) an individual party or the child is subject to the personal jurisdiction of the tribunal and all of the individual parties have filed in the issuing tribunal a written consent providing that the appropriate tribunal of this state may modify the support order and that this state may assume continuing, exclusive jurisdiction over the order.

(2) Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an

order issued by a tribunal of this state, and the order may be enforced and satisfied in the same manner.

(3) A tribunal of this state may modify only a child support order. A tribunal may not modify provisions, such as custody, visitation, or other provisions not related to support.

(4) On issuance of an order modifying a child support order issued in another state, a tribunal of this state has continuing, exclusive jurisdiction.

(5) Within 30 days after issuance of a modified child support order, the tribunal issuing the modification shall file a certified copy of the order:

(a) with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order; and

(b) in each tribunal in which the modifying tribunal knows that earlier order has been registered.

History: En. Sec. 46, Ch. 328, L. 1993.

40-5-195. Recognition of order modified in another state. A tribunal of this state shall recognize a modification of its earlier child support order by a tribunal of another state that assumed jurisdiction pursuant to a law substantially similar to this part. Except as otherwise provided in this part, the tribunal of this state shall, upon request:

(1) enforce the order that was modified only as to amounts accruing before the modification;

(2) enforce only nonmodifiable aspects of that order;

(3) provide other appropriate relief only for violations of the order that occurred before the effective date of the modification; and

(4) recognize the modifying order of the other state, upon registration, for the purpose of enforcement.

History: En. Sec. 47, Ch. 328, L. 1993.

40-5-196. Proceeding to determine parentage. (1) A tribunal of this state may serve as an initiating or responding tribunal in a proceeding brought under this part or a law substantially similar to this part, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act to determine whether the petitioner is a parent of a particular child or to determine whether a respondent is a parent of that child.

(2) In a proceeding to determine parentage, a responding tribunal of this state shall apply the rules of this state on choice of law.

(3) A proceeding to determine parentage directed to:

(a) the department of social and rehabilitation services from an initiating state pursuant to 40-5-263 and this part is subject to the provisions of 40-5-231 through 40-5-237 or Title 40, chapter 6, part 1, as applicable; and

(b) a district court from an initiating state is subject to the provisions of Title 40, chapter 6, part 1.

History: En. Sec. 48, Ch. 328, L. 1993.

40-5-197. Uniformity of interpretation. This part must be so construed as to effectuate its general purpose to make uniform the law with respect to the subject of this part among states enacting it.

History: En. Sec. 41, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-81; amd. Sec. 49, Ch. 328, L. 1993; Sec. 40-5-142, MCA 1991; redes. 40-5-197 by Code Commissioner, 1993.

Compiler's Comments

1993 Amendment: Chapter 328 after "law" substituted "with respect to the subject of this part among" for "of those"; and made minor changes in style.

40-5-198 and 40-5-199 reserved.

Part 2

Administrative Enforcement of Support

Part Cross-References

Reciprocal Agreement for Collection of Wages Act of 1977, Title 39, ch. 3, part 3.

Child Support Income Deduction Act of 1981, Title 40, ch. 5, part 3.

Child Support Enforcement Act of 1985, Title 40, ch. 5, part 4.

Inspections of birth records for child support actions, 50-15-112, 50-15-206.

40-5-201. Definitions. As used in this part, the following definitions apply:

(1) "Alleged father" means a man who is alleged to have engaged in sexual intercourse with a child's mother during a possible time of conception of the child or a man who is presumed to be a child's father under the provisions of 40-6-105.

(2) (a) "Child" means any person under 18 years of age who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States, any person under 19 years of age and still in high school, or any person who is mentally or physically incapacitated if the incapacity began prior to the person's 18th birthday and for whom:

(i) support rights are assigned under 53-2-613;

(ii) a public assistance payment has been made;

(iii) the department is providing support enforcement services under 40-5-203; or

(iv) the department has received a referral for interstate services from an agency of another state under the provisions of the Uniform Reciprocal Enforcement of Support Act or under Title IV-D of the Social Security Act.

(b) Child may not be construed to limit the ability of the department to enforce a support order according to its terms when the order provides for support to extend beyond the child's 18th birthday.

(3) "Department" means the department of social and rehabilitation services.

(4) "Director" means the director of the department of social and rehabilitation services or the director's authorized representative.

(5) "Guidelines" means the child support guidelines adopted pursuant to 40-5-209.

(6) "Hearing officer" or "hearing examiner" means the hearing officer appointed by the department for the purposes of this chapter.

(7) "Need" means the necessary costs of food, clothing, shelter, and medical care for the support of a child or children.

(8) "Obligee" means:

(a) a person to whom a duty of support is owed and who is receiving support enforcement services under this part; or

(b) a public agency of this or another state having the right to receive current or accrued support payments.

(9) "Obligor" means a person, including an alleged father, who owes a duty of support.

(10) "Parent" means the natural or adoptive parent of a child.

(11) "Paternity blood test" means a test that demonstrates through examination of genetic markers either that an alleged father is not the natural father of a child or that there is a probability that an alleged father is the natural father of a child. Paternity blood tests may include but are not limited to the human leukocyte antigen test and DNA probe technology.

(12) "Public assistance" means any type of monetary or other assistance for a child, including medical and foster care benefits. The term includes payments to meet the needs of a relative with whom the child is living, if assistance has been furnished with respect to the child by a state or county agency of this state or any other state.

(13) "Support debt" or "support obligation" means the amount created by:

(a) the failure to provide support to a child under the laws of this or any other state or a support order; or

(b) a support order for spousal maintenance if the judgment or order requiring payment of maintenance also contains a judgment or order requiring payment of child support for a child of whom the person awarded maintenance is the custodial parent.

(14) "Support order" means an order providing a determinable amount for temporary or final periodic payment of funds for the support of a child, that is issued by:

(a) a district court of this state;

(b) a court of appropriate jurisdiction of another state, Indian tribe, or foreign country;

(c) an administrative agency pursuant to proceedings under this part; or

(d) an administrative agency of another state, Indian tribe, or foreign country with a hearing function and process similar to those of the department under this part.

(15) "IV-D" means the provisions of Title IV-D of the Social Security Act and the regulations promulgated thereunder.

History: En. Sec. 1, Ch. 612, L. 1979; amd. Sec. 1, Ch. 561, L. 1985; amd. Sec. 1, Ch. 119, L. 1989; amd. Sec. 1, Ch. 287, L. 1989; amd. Sec. 1, Ch. 549, L. 1989; amd. Sec. 28, Ch. 702, L. 1989; amd. Sec. 5, Ch. 266, L. 1991; amd. Sec. 8, Ch. 631, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 631 in definition of child, in (a) after "United States", inserted "any person under 19 years of age and still in high school, or any person who is mentally or physically incapacitated if the incapacity began prior to the person's 18th birthday" and inserted (b) providing that the definition may not be construed to limit the ability of the Department to enforce a support order; in definition of support order, in (b) and (d) after "state", inserted "Indian tribe, or foreign country"; and made minor changes in style.

Cross-References

Maintenance, 40-4-203.
Child support, 40-4-204.

40-5-202. Department of social and rehabilitation services — powers and duties regarding collection of support debt. (1) The department may take action under the provisions of this part, the abandonment or nonsupport statutes, the Uniform Parentage Act established in Title 40, chapter 6, part 1, and other appropriate state and federal statutes to provide IV-D services if the department:

(a) receives a referral from the department of social and rehabilitation services or the department of family services on behalf of the child;

(b) is providing child support enforcement services under 40-5-203; or

(c) receives an interstate referral, whether under the Revised Uniform Reciprocal Enforcement of Support Act, the Uniform Interstate Family Support Act, or an interstate action by a Title IV-D agency of another state.

(2) A verified statement, filed by the department, that it is providing services is prima facie evidence of its authority to act. The department may initiate, participate in, or exercise any remedy available in a judicial or an administrative action on the same basis as any other party.

(3) The department has the power of attorney to act in the name of any obligee to endorse and cash any and all drafts, checks, money orders, or other negotiable instruments received by the department on behalf of a child.

(4) The department is a party to and must be afforded notice and an opportunity to participate in any proceeding relating to paternity or to the establishment, enforcement, or modification of a support obligation, whether initiated by the obligee, the obligor, or the child. A recipient of services may not act to prejudice the rights of the department while the services are being provided.

(5) If child support enforcement services are being or have been provided under this part, an agreement between any obligee and any obligor either relieving an obligor of any duty of support or purporting to settle past, present, or future support obligations either as settlement or prepayment may not act to reduce or terminate any rights of the department to recover from the obligor for support debt provided unless the department has consented to the agreement in writing.

(6) The department may petition a court or an administrative agency for modification of any order on the same basis as a party to that action is entitled to do.

(7) The department is subrogated to the right of the child or obligee to maintain any civil action or execute any administrative remedy available under the laws of this or any other state to collect a support debt. This right of subrogation is in addition to and independent of the assignment under 53-2-613 and the support debt created by 40-5-221.

(8) If public assistance is being or has been paid, the department is subrogated to the debt created by a support order and any money judgment is considered to be in favor of the department. This subrogation is an addition to any assignment made under 53-2-613 and applies to the lesser of:

(a) the amount of public assistance paid; or

(b) the amount due under the support order.

(9) The department may adopt and enforce the rules necessary to carry out the provisions of this part.

(10) The department, for the purposes mentioned in this part, through its director or the director's authorized representatives, may administer oaths to certify official acts and records, issue subpoenas, and compel witnesses and the production of books, accounts, documents, and evidence.

(11) When a person is required to give notice to, serve, or provide a written response to the department in a proceeding concerning the establishment or

enforcement of child support, the notice, service, or response must be made to the department's child support enforcement division.

History: En. Sec. 2, Ch. 612, L. 1979; amd. Sec. 1, Ch. 188, L. 1981; amd. Sec. 2, Ch. 561, L. 1985; amd. Sec. 30, Ch. 609, L. 1987; amd. Sec. 2, Ch. 549, L. 1989; amd. Sec. 22, Ch. 702, L. 1989; amd. Sec. 53, Ch. 328, L. 1993; amd. Sec. 9, Ch. 631, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 328 in (1)(c) inserted reference to the Uniform Interstate Family Support Act; and made minor changes in style.

Chapter 631 near end of (1), after "statutes to", substituted "provide IV-D services" for "ensure that the parent or other person responsible pays for the care, support, or maintenance of a child"; substituted (2) regarding Department's authority to act on a verified statement for former language that read: "If the department is providing child support enforcement services for a child under this part, the department becomes trustee of any cause of action of the child or the obligee to recover support due to the child or obligee from the obligor. The department may bring and maintain the action in its own name or in the name of the obligee"; substituted first sentence of (4) regarding Department's standing as a party to a proceeding for former sentence that read: "For purposes of prosecuting any civil action, the department is a real party in interest if it is providing child support enforcement services under this part" and in second sentence substituted "recipient of services" for "obligee"; inserted (11) requiring that notice, service, or response be made to the Child Support Enforcement Division; and made minor changes in style.

Cross-References

Officers who may administer oaths, 1-6-101.

Issuance of subpoena, 26-2-102.

Modification of support, 40-4-208.

Obligations of parents, Title 40, ch. 6, part 2.

How evidence of abandonment established, 41-5-503.

Endangering the welfare of children, 45-5-622.

Parents liable to Department for Aid to Families With Dependent Children payments, 53-4-248.

40-5-203. Child support enforcement services. (1) The department may accept applications for child support enforcement services on behalf of persons who are not recipients of public assistance and may take appropriate action to establish or enforce support obligations against persons owing a duty to pay support.

(2) The department may establish by rule the terms and conditions by which services are provided under this section.

(3) If child support enforcement services are provided under this part to or for a child as a result of the payment of public assistance, the department may continue to provide services after public assistance is no longer being paid, without requiring an application. An obligee's acceptance of continued services constitutes the obligee's agreement to the terms and conditions set for applicants by the department under this section.

(4) The department may terminate services under this section if it:

(a) receives a written request from the obligee for termination of services;

(b) receives notice that the child is receiving public assistance; or

(c) determines that an obligee has violated any term or condition set by the department for an applicant under this section.

History: En. Sec. 3, Ch. 612, L. 1979; amd. Sec. 1, Ch. 672, L. 1985; amd. Sec. 3, Ch. 549, L. 1989; amd. Sec. 15, Ch. 702, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Standardized fee schedule, 40-5-210.

Income withholding, 40-5-411.

Department of Social and Rehabilitation Services to monitor and enforce child support payments, 40-5-412.

40-5-204. Cooperation by obligee. An obligee shall cooperate with the department in:

(1) identifying and locating the obligor;
(2) establishing the paternity of a child;
(3) obtaining support or any other payments due the obligee and child; and
(4) obtaining reimbursement for previously paid public assistance, if any.

History: En. Sec. 4, Ch. 612, L. 1979; amd. Sec. 4, Ch. 549, L. 1989.

Cross-References

How parent and child relationship established, 40-6-104.

40-5-205. Payment of support money collected to department — notice. If the department gives written notice to the obligor, to the clerk of the court, or to an administrative agency that issued a support order, that the child for whom a support order exists is receiving services from the department, then any support money must be paid to the department.

History: En. Sec. 5, Ch. 612, L. 1979; amd. Sec. 5, Ch. 549, L. 1989.

Cross-References

Parents liable to Department for Aid to Families With Dependent Children payments, 53-4-248.

40-5-206. Central unit for information and administration — cooperation enjoined — availability of records. (1) The department shall establish a central unit to serve as a registry for the receipt of information, for answering interstate inquiries concerning deserting parents, for receiving and answering requests for information made by consumer reporting agencies under 40-5-261, to coordinate and supervise departmental activities in relation to deserting parents, and to assure effective cooperation with law enforcement agencies.

(2) If services are provided to a child under this part, the department may request and, notwithstanding any statute making the information confidential, all state, county, and city agencies, officers, and employees must provide on request information, if known, concerning an obligor, including:

(a) name;
(b) address of obligor's residence;
(c) date of birth;
(d) social security number;
(e) wages or other income;
(f) number of dependents claimed for state and federal income tax withholding purposes;
(g) name and address of employer;
(h) address of any real property owned by the obligor; and
(i) any other asset in which the obligor may have an interest, including the extent, nature, and value of the interest.

(3) Any information obtained by the department during the course of a child support investigation that is confidential at the source must be treated by the department as confidential and must be safeguarded accordingly.

(4) Use or disclosure of information obtained by the department from confidential sources of and information maintained by the department in its records, including the names, addresses, and social security numbers of obligors and obligees, is limited to:

(a) purposes directly related to the provision of services under this chapter;

(b) county attorneys and courts having jurisdiction in support and abandonment proceedings or actions or agencies in other states engaged in the enforcement of support of minor children as authorized by the rules of the department and by the provisions of the federal Social Security Act; and

(c) any other use permitted or required by the federal Social Security Act.

History: En. Sec. 10, Ch. 612, L. 1979; amd. Sec. 3, Ch. 543, L. 1985; amd. Sec. 4, Ch. 418, L. 1989; amd. Sec. 6, Ch. 549, L. 1989; amd. Sec. 10, Ch. 631, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 631 near beginning of (2), after "request and", inserted "notwithstanding any statute making the information confidential", after "information" inserted "if known", and after "concerning" deleted "the location, income, and assets of"; inserted (2)(a) through (2)(i) outlining information the Department may request; inserted (3) through (4)(a) regarding use and disclosure of information; at beginning of (4)(b) deleted "Except as provided in 40-5-261 and rules adopted under 40-5-262, any records established pursuant to the provisions of this section are available only to the department"; inserted (4)(c) that read: "(c) any other use permitted or required by the federal Social Security Act"; and made minor changes in style.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

40-5-207. Department authorized to enforce maintenance awards. If a judgment or order creating a child support obligation also contains a judgment or order for the support of a spouse or former spouse who is the custodial parent of the child, the department may collect and enforce spousal support under this part.

History: En. Sec. 4, Ch. 561, L. 1985; amd. Sec. 7, Ch. 549, L. 1989.

Cross-References

Duties of husband and wife as to support, 40-2-102.

Liability of married person when abandoned by spouse, 40-2-104.

Maintenance, 40-4-203.

Child support, 40-4-204.

40-5-208. Medical support — obligation enforcement — sanctions. (1) (a) In any proceeding initiated pursuant to this part to establish a child support order, whether final or temporary, and in each modification of an existing order, the department shall require the obligor to obtain and maintain health insurance coverage for each child if health insurance coverage is available through the obligor's employment or other group health insurance plan. The order or modification of an order must include a statement that the insurance must be obtained and maintained whenever the department is providing support enforcement services and that the failure to do so may result in the imposition of sanctions under this section.

(b) If the support order or modification of an order does not include a provision requiring the obligor to provide health insurance coverage for a child, upon notice to the obligor that the child is receiving support enforcement services under Title IV-D of the Social Security Act, the obligor shall obtain and maintain health insurance coverage as provided for in subsection (1)(a). This insurance is in addition to:

(i) an order requiring the obligee to maintain health insurance coverage;

(ii) an agreement that the obligee will maintain health insurance coverage; or

(iii) a failure or omission of the court order or modification of an order to require health insurance coverage.

(2) (a) If the department is providing child support enforcement services and the obligor is required by an existing district court order or an administrative order under this section to provide health insurance coverage for a child, the department shall also enforce the health insurance obligation.

(b) To ensure that health insurance coverage is available for the child, the obligor, upon written request by the department, shall provide the name of the insurance carrier, the policy identification name and number, the names of the persons covered, and any other pertinent information regarding coverage.

(3) (a) The department may issue a notice commanding the obligor to appear at a hearing held by the department and show cause why a sum of not more than $100 should not be assessed for each month health insurance coverage is not secured or maintained if the department determines an obligor has failed to:

(i) obtain or maintain health insurance coverage as required under this section; or

(ii) provide information required under this section.

(b) If the department finds, after hearing or the obligor's failure to appear, that health insurance coverage has not been obtained or maintained or that the obligor has failed to provide the information required, the department may assess against the obligor not more than $100 for each month health insurance coverage has not been obtained or maintained or for each month information has not been provided. The amounts may be enforced by any administrative remedy available to the department for the enforcement of child support obligations, including warrant for distraint provided for in 40-5-247 and income withholding provided for in Title 40, chapter 5, part 4.

(4) The health insurance coverage must be provided under this section even though it may reduce the amount of the child support obligation or reduce the obligor's ability to pay child support as required.

(5) Any amounts collected pursuant to this section must be returned to the general fund to help offset expenditures for medicaid.

History: En. Sec. 1, Ch. 130, L. 1987; amd. Sec. 8, Ch. 549, L. 1989; amd. Sec. 17, Ch. 702, L. 1989; amd. Sec. 11, Ch. 631, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 631 near end of second sentence of (3)(b) substituted "40-5-247" for "40-5-241"; and made minor changes in style.

Cross-References

Obligations of parents for the support of their children, 40-6-211.

40-5-209. Child support guidelines — periodic review. (1) The department shall adopt uniform child support guidelines to be used to determine minimum child support amounts. In addition to giving notice and publicizing the rules as provided in the Montana Administrative Procedure Act, the department shall give notice to the supreme court, the district courts, and the state bar of Montana prior to adopting the guidelines.

(2) The guidelines must consider the factors set forth in 40-4-204(2) and 40-6-116(5).

(3) At least once every 4 years, the department shall:

(a) review the uniform child support guidelines employed to determine child support obligations to ensure that their application results in the determination of appropriate child support award amounts; and

(b) propose any appropriate modification to the legislature.

History: En. Sec. 3, Ch. 702, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

40-5-210. Standardized fee schedule — rules. (1) The department may charge an application fee to each person applying for services under 40-5-203, except that the fee may not be charged to persons who receive continuing services under 40-5-203(3). The application fee may be:

(a) a flat dollar amount; or

(b) an amount based on a sliding fee schedule that is based on the applicant's income level.

(2) If paternity is established or presumed under 40-5-234 for the alleged father, the fees for paternity blood testing may be recovered from the parent, whether the alleged father or the mother, denying paternity of the alleged father. The total amount of the paternity blood testing fee may not exceed the actual costs of the paternity blood tests.

(3) The department may charge a handling fee for each payment of support collected on behalf of any obligee who is not a recipient of public assistance. The department may withhold the fee from the support payment before distribution to the obligee.

(4) The department may charge an obligor a late payment fee for each late payment of support collected on behalf of any obligee.

(5) The department may establish a fee schedule in order to recover costs and expenses in excess of the application, handling, and late fees. The fees must be commensurate with costs or an average of the expenditures related to specific or routine activities.

(a) The department shall develop procedures for determining whether it is appropriate for either the obligor or the obligee to be responsible for payment of the fee. In developing the procedures, the department shall consider federal regulations promulgated under Title IV-D of the Social Security Act.

(b) In an action to establish paternity or to establish or enforce a child support obligation, whether in district court or by administrative process, the department must be awarded costs in the amount established in the fee schedule as part of any judgment, decree, or order whenever the department:

(i) is a prevailing party in the action; or

(ii) is not a party but incurs expenses and costs related to the action.

(6) The department may collect the fees awarded under this section by one of the following means:

(a) if the fee is owed by an obligor, the fee may be:

(i) collected through any remedy available to the department for the collection of child support arrearages; or

(ii) deducted from any payments made by the obligor before the payment is distributed to the obligee. Credit for the payment must be reduced by the amount of the deduction for the fee. The deduction for fees may not reduce any current support due to the obligee. The deduction for a late payment fee may not reduce any current or past-due support due to the obligee.

(b) if the fee is owed by the obligee, the fee may be collected separately through any remedy available to the department for the collection of child support or the department may withhold the fee amount out of any payment collected on behalf of the obligee. The obligor must receive full credit for the payment as if the withholding of fees did not occur.

(7) The department, upon a showing of necessity, may waive or defer any fee assessed under this section.

(8) The department may adopt rules necessary to implement fee schedules under this section.

(9) The fees and costs charged and collected under this section must be paid monthly into the state treasury to the credit of the child support enforcement division special revenue fund and must be accompanied by a detailed statement of the amounts collected.

History: En. Sec. 16, Ch. 702, L. 1989; amd. Sec. 2, Ch. 294, L. 1993; amd. Sec. 12, Ch. 631, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 294 inserted (2) concerning paternity blood testing fee; and made minor changes in style. Amendment effective April 9, 1993.

Chapter 631 substituted (1) allowing charging of an application fee for former language that read: "The department shall by rule establish a standardized schedule of fees for the recovery of administrative costs and expenses of child support enforcement. The fees may be recovered from an obligor if the obligor's failure or refusal to support a child makes it necessary for the department to provide child support enforcement services under this part. The fees must be commensurate with costs or an average of the expenditures related to specific or routine activities"; inserted (3) allowing charging of a handling fee; inserted (4) allowing charging of a late payment fee; inserted (5) and (5)(a) providing for establishment of a fee schedule; inserted (5)(b)(ii) that read: "(ii) is not a party but incurs expenses and costs related to the action"; deleted former (3) that read: "(3) Fees awarded under this section are in the nature of child support and are collectible in the same manner as a support order. The fee award may be collected separately or added to and collected with any balance due on a support debt"; deleted former (4) that read: "(4) Collection of a fee award may not reduce any current child support payment due the obligee"; substituted (6) regarding methods of fee collection for former (5) that read: "(5) Arrearage amounts collected that include a fee must be allocated as follows:

(a) If the obligee is a recipient of public assistance, the amount must be allocated first to satisfy the fee.

(b) If the obligee is not a recipient of public assistance, the first 10% of each amount collected must be allocated to satisfy the fee"; inserted (8) allowing rulemaking; inserted (9) regarding deposit of fees; and made minor changes in style.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

40-5-211. Petition for support order by married parent with minor children receiving public assistance. (1) Any married parent with minor children, natural or legally adopted, who is receiving public assistance in the absence of a support order may apply to the district court of the county in which the parent resides or in which the spouse may be found for an order upon such spouse, if such spouse is the natural or adoptive mother or father of such children, to provide for the parent's support and the support of the parent's minor children by filing in the county a petition setting forth the facts and circumstances upon which the parent relies for the order.

(2) If it appears to the satisfaction of the court that the parent is without funds to employ counsel, the department may file a petition on behalf of the parent. If satisfied that a just cause exists, the court shall direct that a citation

be issued to the spouse requiring that spouse to appear at a time set by the court to show cause why an order of support should not be entered in the matter.

History: **En. Sec. 6, Ch. 612, L. 1979.**

Cross-References

Obligations of parents for the support and education of their children, 40-6-211.

Adoption of children, Title 40, ch. 8, part 1.

Parents liable to Department for Aid to Families With Dependent Children payments, 53-4-248.

40-5-212. Petition for support order by married parent with minor children receiving public assistance — powers of court. (1) After hearing the petition for an order of support, the court shall make an order granting or denying it and fixing the terms and amount of the support.

(2) The court has the same power to compel the attendance of witnesses and the production of testimony as in actions and suits, make such decree or orders as are equitable in view of the circumstances of both parties, and punish violations as other contempts are punished.

History: **En. Sec. 7, Ch. 612, L. 1979.**

Cross-References

Contempts, Title 3, ch. 1 part 5.

Subpoenas, Title 26, ch. 2, part 1.

Duties of witnesses, Title 26, ch. 2, part 3.

Child support, 40-4-204.

40-5-213. Financial statements by obligor — penalty. (1) If the department is providing child support enforcement services under this part and has reasonable cause to believe that a support obligation is owed, an obligor, upon written request, shall complete a statement, under oath, stating the obligor's:

(a) current monthly income;

(b) total income over the past 36 months;

(c) the number of dependents for whom the obligor is providing support;

(d) the amount the obligor is contributing toward the support of a child for whom the department is providing services;

(e) current monthly living expenses; and

(f) all other information pertinent to the obligor's financial condition.

(2) The department may require additional financial statements from the obligor during the period the department is providing services to the child.

(3) Failure to comply with this section is a misdemeanor.

History: **En. Sec. 8, Ch. 612, L. 1979; amd. Sec. 9, Ch. 549, L. 1989.**

Cross-References

Misdemeanor defined, 45-2-101.

Misdemeanor — no penalty specified, 46-18-212.

40-5-214. Scale of suggested minimum contributions. (1) The department shall establish a scale of suggested minimum contributions to assist counties and courts in determining the amount that a parent should be expected to contribute toward the support of his child under this part. The scale must be based on the uniform child support guidelines adopted by the department under 40-5-209.

(2) Copies of the scale must be made available to courts, county offices, county attorneys, and upon request, to any other state or county officer or

agency engaged in the administration or enforcement of this part. Attorneys admitted to practice in Montana may have access to the scale.

History: En. Sec. 9, Ch. 612, L. 1979; amd. Sec. 4, Ch. 702, L. 1989.

Cross-References

Child support, 40-4-204.

Judgment or order concerning parentage, 40-6-116.

40-5-215 through 40-5-220 reserved.

40-5-221. Debt to state by obligor — limitations. (1) Except as provided in subsection (2), any payment of public assistance money made to or for the benefit of a child creates a debt due and owing the state of Montana by the obligor in an amount equal to the amount of public assistance money so paid. In the case of an obligor who is an adoptive parent, a debt for public assistance paid may not accrue prior to the date of adoption.

(2) If a support order has been entered, the support debt created by this section may not exceed the amount of the order.

(3) If a child has been placed in foster care and a written agreement for payment of support exists between the obligor and any state agency, the support debt is limited to the amount provided for in the agreement. However, if a support order is or has been entered, the provisions of the order prevail over the agreement.

(4) The department shall adopt rules based on ability to pay, with respect to the level of support to be provided for in such agreements or modifications of such agreements based on changed circumstances.

(5) The department may establish and collect a debt created under this section in a proceeding that is in addition to and independent of the subrogation created by 40-5-202(7) and the assignment under 53-2-613.

History: En. Sec. 11, Ch. 612, L. 1979; amd. Sec. 10, Ch. 549, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Modification of support, 40-4-208.

Effect of final decree of adoption, 40-8-125.

Parents liable to Department for Aid to Families With Dependent Children payments, 53-4-248.

40-5-222. Support debt based upon support order — notice — contents — action to collect. (1) The department may issue a notice of a support debt accrued or accruing based upon a support order. The notice may be served upon the obligor in the manner prescribed for the service of a summons in a civil action in accordance with the provisions of the Montana Rules of Civil Procedure, demanding payment within 20 days of the date of receipt.

(2) The notice of debt shall include:

(a) a statement of the support debt accrued or accruing, computable on the amount required to be paid under any support order;

(b) a statement that the property of the debtor is subject to collection action;

(c) a statement that the property is subject to distraint and seizure and sale;

(d) a statement that the net proceeds will be applied to the satisfaction of the support debt; and

(e) a statement that the obligor is entitled to a fair hearing.

(3) Action to collect the support debt by distraint and seizure and sale is lawful after 20 days from the date of service upon the obligor or 20 days from the receipt or refusal by the debtor of the notice of debt.

(4) Within 20 days of the date of service of notice of support debt, the obligor may request a fair hearing as provided in 40-5-226.

History: En. Sec. 12, Ch. 612, L. 1979; amd. Sec. 2, Ch. 188, L. 1981; amd. Sec. 41, Ch. 439, L. 1981; amd. Sec. 11, Ch. 549, L. 1989.

Cross-References

Process — summons, Rule 4C, M.R.Civ.P. (see Title 25, ch. 20).

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Seizure of person or property, Rule 64, M.R.Civ.P. (see Title 25, ch. 20).

Parents liable to Department for Aid to Families With Dependent Children payments, 53-4-248.

40-5-223. Notice of support liability based upon payment of public assistance — notice — contents — collection warrant — fair hearing. (1) In the absence of a district court order the department may issue a notice of a support liability accrued or accruing based upon payment of public assistance to or for the benefit of a child. The notice of liability must be served upon the obligor in the manner prescribed for the service of summons in a civil action, in accordance with the provisions of the Montana Rules of Civil Procedure.

(2) The notice of liability shall include:

(a) a statement of the support debt accrued or accruing, computable on the basis of the amount of public assistance previously paid and to be paid in the future;

(b) a statement of the amount of the monthly public assistance payment;

(c) a statement of the name of the obligee and the name of the child or children for whom assistance is being paid;

(d) a demand for immediate payment of the support debt or, in the alternative, a demand that the obligor make answer within 20 days of the date of service to the department stating defenses to liability under 40-5-221;

(e) a statement that if no answer is made on or before 20 days from the date of the service the support debt must be assessed and determined subject to computation and is subject to collection action;

(f) a statement that the property of the obligor will be subject to distraint and seizure and sale.

(3) If no answer is had by the department to the notice of liability on or before 20 days of the date of service, the support debt must be assessed and determined subject to the computation and the department may issue a warrant for distraint authorizing a collection action under this part.

(4) If the obligor, within 20 days of the date of service of notice of liability, makes answer to the department alleging defenses to liability under 40-5-221, the obligor may receive a fair hearing pursuant to 40-5-226. The decision of the department in the hearing must establish the obligor's obligation, if any, for repayment of public assistance funds spent to date as an assessed and determined support debt.

History: En. Sec. 13, Ch. 612, L. 1979; amd. Sec. 42, Ch. 439, L. 1981; amd. Sec. 12, Ch. 549, L. 1989.

Cross-References

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Seizure of person or property, Rule 64, M.R.Civ.P. (see Title 25, ch. 20).

Parents liable to Department for Aid to Families With Dependent Children payments, 53-4-248.

40-5-224. Finding of support liability based upon payment of public assistance — warrant for distraint — bond to release warrant — action to collect. (1) If the department reasonably believes that the obligor is not a resident of this state or is about to move from this state or has hidden, absconded, or left, or has removed or is about to remove, secrete, waste, or otherwise dispose of property that could be made subject to collection action to satisfy the support debt, the department may issue a warrant for distraint pursuant to 40-5-247 during the pendency of the fair hearing or after the hearing, whether or not appealed. Further action may not be taken on the warrant until final determination after fair hearing or appeal. The department shall make and file in the record of the fair hearing an affidavit stating the reasons upon which the belief is founded. The obligor may furnish a bond, not to exceed the amount of the support debt, during pendency of the hearing or after the hearing, and in that case warrants issued must be released. If the decision resulting from the hearing is in favor of the obligor, all warrants issued must be released.

(2) The department may commence action under the provisions of this part to collect the support debt on the date of issuance of the decision resulting from the hearing.

History: En. Sec. 14, Ch. 612, L. 1979; amd. Sec. 43, Ch. 439, L. 1981; amd. Sec. 13, Ch. 549, L. 1989; amd. Sec. 13, Ch. 631, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 631 near end of first sentence of (1) substituted "40-5-247" for "40-5-241"; and made minor changes in style.

Cross-References

Plaintiff's affidavit for obtaining writ, 27-18-202.

Defendant's undertaking to prevent levy, 27-18-301.

40-5-225. Notice of financial responsibility — temporary and final support obligations — administrative procedure. (1) (a) In the absence of a support order, the department may serve an obligor with a notice of financial responsibility alleging a child's need for support and the amount of the need and requiring the obligor to appear and show cause at a hearing held by the department why the obligor should not be finally ordered to pay the amount alleged in the notice.

(b) The notice must state:

(i) the names of the obligee and child;

(ii) the amount of current and future support to be paid each month for the child;

(iii) that if the obligor does not file a written answer within 20 days from the date of service or refusal of service, the amount in the notice must be finally ordered;

(iv) that the obligor is entitled to a fair hearing under 40-5-226.

(2) If, prior to the service of the notice under this section, the department has information concerning the obligor's financial condition, the department's allegation of the obligor's monthly support responsibility must be based on

the scale of suggested minimum contributions under 40-5-214. If such information is unknown to the department, the allegations of the obligor's monthly support responsibility must be based on the greater of:

(a) the amount of public assistance payable under Title 53, chapter 4; or

(b) the alleged need.

(3) If the obligor objects to the notice, the obligor shall file a written answer with the department within 20 days from the date of service or refusal of service. If the department receives a timely answer, it shall conduct a fair hearing under 40-5-226. If the department does not receive a timely answer, it shall order the obligor to pay the amount stated in the notice.

(4) (a) If a support action is pending in district court and a temporary or permanent support obligation has not been ordered, the department may issue to the obligor a notice of temporary support obligation.

(b) The notice must contain:

(i) the names of the child and the person or agency having the custodial care of the child;

(ii) an amount for temporary monthly support determined as provided in subsection (2);

(iii) a statement that the obligor may request a hearing at which the obligor may show that a different support amount is appropriate or that establishment of a support obligation is inappropriate under the circumstances. The hearing must be conducted in accordance with the procedures of 40-5-226.

(iv) a statement that a hearing must be requested in writing within 10 days of receipt of the notice or the order for a temporary support order will be entered in the amount stated in the notice; and

(v) a statement that the temporary support order will terminate upon the entry of a district court support order. If the district court order is retroactive, any amount paid for a particular period under the temporary support order must be credited against the amounts due under the district court order for the same period, but excess amounts may not be refunded. If the district court determines that a periodic support obligation is not proper, any amount paid under the temporary support order must be refunded to the obligor.

(5) (a) If a temporary support order is entered or if proceedings are commenced under this section for a married obligor, the department shall vacate any support order or dismiss any proceeding under this part if it finds that the parties to the marriage have:

(i) reconciled without the marriage having been dissolved;

(ii) made joint application to the department to vacate the order or dismiss the proceeding; and

(iii) provided proof that the marriage has been resumed.

(b) The department may not vacate a support order or dismiss a proceeding under this subsection (5) if it determines that the rights of a third person or the child are affected. The department may issue a new notice under this section if the parties subsequently separate.

(6) Any notice of financial responsibility and the notice of temporary support obligation must be served in the same manner prescribed for the

service of a summons in civil action in accordance with the Montana Rules of Civil Procedure.

History: En. Sec. 15, Ch. 612, L. 1979; amd. Sec. 44, Ch. 439, L. 1981; amd. Sec. 14, Ch. 549, L. 1989.

Cross-References

Hearing — rules of evidence, cross-examination, judicial notice, 2-4-612.

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Seizure of person or property, Rule 64, M.R.Civ.P. (see Title 25, ch. 20).

Parents liable to Department for Aid to Families With Dependent Children payments, 53-4-248.

40-5-226. Administrative hearing — nature — place — time — determinations — failure to appear — entry of final decision and order. (1) The administrative hearing is defined as a "contested case".

(2) If a hearing is requested, it must be scheduled within 20 days.

(3) The hearing officer shall determine the liability and responsibility, if any, of the obligor under the notice and shall enter a final decision and order in accordance with the determination.

(4) If the obligor fails to appear at the hearing or fails to timely request a hearing, the hearing officer, upon a showing of valid service, shall enter a decision and order declaring the amount stated in the notice to be final.

(5) In a hearing to determine financial responsibility, whether temporary or final, and in any proceeding to modify support under 40-5-273, the monthly support responsibility must be determined in accordance with the evidence presented and with reference to the uniform child support guidelines adopted by the department under 40-5-209. The hearing officer is not limited to the amounts stated in the notice. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the order is entered upon the parties' consent. A verified representation of a defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the hearing officer finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in a particular case. If the hearing officer finds that the guideline amount is unjust or inappropriate in a particular case, the hearing officer shall state the reasons for finding that the application of the standards and guidelines is unjust to the child or a party or is inappropriate in that particular case. Similar findings must also be made in a case in which the parties have agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

(6) Within 20 days of the hearing, the hearing officer shall enter a final decision and order. The determination of the hearing officer constitutes a final agency decision, subject to judicial review under 40-5-253 and the provisions of the Montana Administrative Procedure Act.

(7) A support order entered under this part must contain a statement that the order is subject to review and modification by the department upon the

request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under IV-D for the enforcement of the order.

(8) A support debt determined pursuant to this section is subject to collection action without further necessity of action by the hearing officer.

(9) A support debt or a support responsibility determined under this part by reason of the obligor's failure to request a hearing under this part or failure to appear at a scheduled hearing may be vacated, upon the motion of an obligor, by the hearing officer within the time provided and upon a showing of any of the grounds enumerated in the Montana Rules of Civil Procedure.

(10) Unless the hearing officer makes a written exception under 40-5-315 or 40-5-411 and the exception is included in the support order, every order establishing a child support obligation, whether temporary or final, and each modification of an existing child support order under this part is enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. A support order that omits that provision or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment of the support order or for any further action by the hearing officer.

(11) For the purposes of income withholding provided for in subsection (10), whenever the department establishes or modifies a child support obligation, the department's order must include a provision requiring the obligor, for as long as the department is providing support enforcement services, to keep the department informed of the name and address of the obligor's current employer, whether the obligor has access to health insurance through an employer or other group, and, if so, the health insurance policy information.

(12) The hearing officer may:

(a) compel obedience to the hearing officer's orders, judgments, and process and to any orders issued by the department, including income-withholding orders issued pursuant to 40-5-415;

(b) compel the attendance of witnesses at administrative hearings;

(c) compel obedience of subpoenas for paternity blood tests;

(d) compel the production of accounts, books, documents, and other evidence; and

(e) punish for civil contempt. Contempt authority does not prevent the department from proceeding in accordance with the provisions of 2-4-104.

(13) A contempt occurs whenever:

(a) a person acts in disobedience of any lawful order, judgment, or process of the hearing officer or of the department;

(b) a person compelled by subpoena to appear and testify at an administrative hearing or to appear for genetic paternity tests fails to do so;

(c) a person compelled by subpoena duces tecum to produce evidence at an administrative hearing fails to do so;

(d) an obligor or obligee subject to a discovery order issued by the hearing officer fails to comply with discovery requests; or

(e) a payor under an order to withhold issued pursuant to 40-5-415 fails to comply with the provisions of the order. In the case of a payor under an income-withholding order, a separate contempt occurs each time income is required to be withheld and paid to the department and the payor fails to take the required action.

(14) An affidavit of the facts constituting a contempt must be submitted to the hearing officer, who shall review it to determine whether there is cause to believe that a contempt has been committed. If cause is found, the hearing officer shall issue a citation requiring the alleged contemnor to appear and show cause why the alleged contemnor should not be determined to be in contempt and required to pay a penalty of not more than $500 for each count of contempt. The citation, along with a copy of the affidavit, must be served upon the alleged contemnor either by personal service or by certified mail. All other interested persons may be served a copy of the citation by first-class mail.

(15) At the time and date set for hearing, the hearing officer shall proceed to hear witnesses and take evidence regarding the alleged contempt and any defenses to the contempt. If the alleged contemnor fails to appear for the hearing, the hearing may proceed in the alleged contemnor's absence. If the hearing officer finds the alleged contemnor in contempt, the hearing officer may impose a penalty of not more than $500 for each count found. The hearing officer's decision constitutes a final agency decision, subject to judicial review under 40-5-253 and subject to the provisions of Title 2, chapter 4.

(16) An amount imposed as a penalty may be collected by any remedy available to the department for the enforcement of child support obligations, including warrant for distraint pursuant to 40-5-247, income withholding pursuant to Title 40, chapter 5, part 4, and state debt offset, pursuant to Title 17, chapter 4, part 1. The department may retain any penalties collected under this section to offset the costs of administrative hearings conducted under this chapter.

(17) The penalties charged and collected under this section must be paid into the state treasury to the credit of the child support enforcement division special revenue fund and must be accompanied by a detailed statement of the amounts collected.

History: En. Sec. 16, Ch. 612, L. 1979; amd. Sec. 45, Ch. 439, L. 1981; amd. Sec. 15, Ch. 549, L. 1989; amd. Sec. 6, Ch. 266, L. 1991; amd. Sec. 3, Ch. 635, L. 1991; amd. Sec. 3, Ch. 294, L. 1993; amd. Sec. 54, Ch. 328, L. 1993; amd. Sec. 14, Ch. 631, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 294 in (5), near beginning, inserted reference to temporary or final financial responsibility hearing and support modification proceeding and at end substituted "uniform child support guidelines adopted by the department under 40-5-209" for "scale of suggested minimum contributions under 40-5-214" and inserted third through eighth sentences concerning requirements for use of guidelines and findings by hearing officer; and made minor changes in style. Amendment effective April 9, 1993.

Chapter 328 deleted former (2) that allowed the hearing officer to hold the hearing in the county of residence or other county convenient to the obligor or obligee or in the county in which the Department or one of its offices is located; in (11) substituted "subsection (10)" for "subsection (11)"; and made minor changes in style.

Chapter 631 inserted (12) outlining hearing officer's powers; inserted (13) clarifying what constitutes contempt; inserted (14) explaining procedure for issuance of contempt citation; inserted (15) providing procedure for hearing contempt charge; inserted (16) regarding collection of penalty; inserted (17) specifying deposit of penalties into the state treasury; and made minor changes in style.

Cross-References

Rules for determining residence, 1-1-215.

Contested cases, Title 2, ch. 4, part 6.

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Relief from judgment or order, Rule 60, M.R.Civ.P. (see Title 25, ch. 20).

Child support, 40-4-204.

Modification of support, 40-4-208.

40-5-227. Filing and docketing of final orders — orders effective as district court decrees. (1) An abstract of any final administrative order under this chapter may be filed in the office of the clerk of the district court of any county of Montana. The order, if approved, must be docketed in the judgment docket of the district court. The properly filed and docketed order has all the force, effect, and attributes of a docketed order or decree of the district court, including but not limited to lien effect and enforceability by supplemental proceedings, writs of execution, and contempt of court proceedings.

(2) A final administrative order that determines and sets periodic support payments in the absence of a district court order, when filed and docketed under this section, may be modified by a district court order only as to installments accruing after actual notice to the parties of any motion for modification. The standard for a modification is that set forth in 40-4-208.

(3) The department may issue a warrant for distraint based upon a properly filed and docketed order pursuant to 40-5-247.

History: En. Sec. 1, Ch. 544, L. 1985; amd. Sec. 2, Ch. 212, L. 1987; amd. Sec. 15, Ch. 631, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 631 at end of (3) substituted "40-5-247" for "40-5-241"; and made minor changes in style.

Cross-References

Contempts, Title 3, ch. 1, part 5.

Duties of the Clerk of District Court, Title 3, ch. 5, part 5.

Judgment, Title 25, ch. 9.

Entry of judgment and satisfaction — lien, Title 25, ch. 9, part 3.

Execution of judgment, Title 25, ch. 13.

Proceedings in aid of execution, Title 25, ch. 14.

Execution, Rule 69, M.R.Civ.P. (see Title 25, ch. 20).

40-5-228 through 40-5-230 reserved.

40-5-231. Jurisdiction and venue. (1) For purposes of an administrative action brought under this part, personal jurisdiction is established in the department over any individual or the individual's guardian or conservator if:

(a) the individual is personally served with notice within this state;

(b) the individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document that has the effect of waiving any contest to personal jurisdiction;

(c) the individual resided with the child in this state;

(d) the individual resided in this state and provided prenatal expenses or support for the child;

(e) the child resides in this state as a result of the acts or directives of the individual;

(f) the individual engaged in sexual intercourse in this state and the child may have been conceived by the act of intercourse; or

(g) there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

(2) Personal jurisdiction over the individuals described in subsection (1) may be acquired by personal service or by service of notice by certified mail.

(3) If the child or either parent resides in this state, a hearing under this part may be held in the county where:

(a) the child resides;

(b) either parent resides; or

(c) the department or any of its regional offices is located.

History: En. Sec. 2, Ch. 119, L. 1989; amd. Sec. 55, Ch. 328, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 328 in (1) substituted language concerning jurisdiction over an individual or the individual's guardian or conservator by personal service in this state, by consent, by the individual residing with the child in this state or residing in this state and providing prenatal expenses or support for the child, by the child residing in this state as a result of the individual's acts or directives, by the individual possibly conceiving the child in this state, and by any other constitutional basis for jurisdiction for former text that read: "For purposes of an administrative action brought under 40-5-231 through 40-5-237, personal jurisdiction is established in the department over any person who has had sexual intercourse in this state that has resulted in the birth of a child who is the subject of such proceedings and over any person subject to the provisions of Rule 4B of the Montana Rules of Civil Procedure, including but not limited to the child, the child's parents, any person having custody of the child, and any alleged father"; in (2), before "described", substituted "individuals" for "persons"; and in (3) substituted "this part" for "40-5-231 through 40-5-237".

Cross-References

Residence — rules for determining, 1-1-215.

Paternity acknowledgment, 50-15-210.

40-5-232. Establishment of paternity — notice of paternity determination — contents. (1) When the paternity of a child has not been legally established under the provisions of Title 40, chapter 6, part 1, or otherwise, the department may proceed to establish paternity under the provisions of 40-5-231 through 40-5-237. An administrative hearing held under the provisions of 40-5-231 through 40-5-237 is a contested case within the meaning of 2-4-102 and is subject to the provisions of Title 2, chapter 4, except as otherwise provided in 40-5-231 through 40-5-237.

(2) It is presumed to be in the best interest of a child to legally determine and establish paternity. A presumption under this subsection may be rebutted by a preponderance of the evidence.

(3) In any proceeding under 40-5-231 through 40-5-237, if a man acknowledges paternity of a child in writing and the acknowledgment is filed with the department, the department may enter an order establishing legal paternity. An acknowledgment is binding on a parent who executes it, whether or not the parent is a minor.

(4) The department shall commence proceedings to establish paternity by serving on an alleged father a notice of paternity determination. The department may not serve the notice unless it has:

(a) a sworn statement from the child's mother claiming that the alleged father is the child's natural father;

(b) evidence of the existence of a presumption of paternity under 40-6-105; or

(c) any other reasonable cause to believe that the alleged father is the child's natural father.

(5) Service on the alleged father of the notice of paternity determination must be made as provided in 40-5-231(2). The notice must include:

(a) an allegation that the alleged father is the natural father of the child involved;

(b) the child's name and place and date of birth;

(c) the name of the child's mother and the name of the person or agency having custody of the child, if other than the mother;

(d) the probable time or period of time during which conception took place;

(e) a statement that if the alleged father fails to timely deny the allegation of paternity, the question of paternity may be resolved against the alleged father without further notice;

(f) a statement that if the alleged father timely denies the allegation of paternity:

(i) the alleged father is subject to compulsory blood testing;

(ii) a blood test may result in a presumption of paternity; and

(iii) upon receipt of the blood test results, if the alleged father continues to deny paternity, the alleged father may request the department to refer the matter to district court for a determination of paternity.

(6) The alleged father may file a written denial of paternity with the department within 20 days after service of the notice of paternity determination.

(7) When there is more than one alleged father of a child, the department may serve a notice of paternity determination on each alleged father in the same consolidated proceeding or in separate proceedings. Failure to serve notice on an alleged father does not prevent the department from serving notice on any other alleged father of the same child.

History: En. Sec. 3, Ch. 119, L. 1989; amd. Sec. 16, Ch. 631, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 631 substituted (5)(f)(iii) regarding referral to District Court for former language that read: "he may request a trial in district court to determine paternity before the final administrative decision is made"; and made minor changes in style.

Cross-References

Affidavits, Title 26, ch. 1, part 10.

Uniform Parentage Act, Title 40, ch. 6, part 1.

Obligations of parents for the support of their children, 40-6-211.

Paternity acknowledgment, 50-15-210.

40-5-233. Establishment of paternity — administrative hearing — subpoena — compulsory blood testing. (1) When the department receives a timely written denial of paternity, it may order the alleged father to appear for an administrative hearing. The hearing may be conducted by teleconferencing methods. If the testimony and other supplementary evidence demonstrate a reasonable probability that the alleged father had sexual intercourse with the child's mother during the probable time of the child's conception or if the evidence shows a probable existence of a presumption under 40-6-105, the department may issue a subpoena ordering the alleged father to submit to paternity blood testing. A reasonable probability of sexual intercourse during the possible time of conception may be established by affidavit of the child's mother.

(2) If the department does not receive a timely written denial of paternity or if an alleged father fails to appear at a scheduled hearing or for a scheduled paternity blood test, the department may enter an order declaring the alleged

father the legal father of the child. The order will take effect within 10 days after entry of the default unless the alleged father before the 10th day presents good cause for failure to make a timely denial or for failure to appear at the hearing or to undergo paternity blood testing. The department may not enter an order under this section if there is more than one alleged father unless the default applies to only one of them and all others have been excluded by the results of paternity blood testing. An order issued under the provisions of this section may be set aside as provided in 40-5-235(3).

(3) If the rights of others and the interests of justice so require, the department may apply to any district court under the provisions of 2-4-104 for an order compelling an alleged father to submit to paternity blood testing. The court shall hear the matter as expeditiously as possible. If the court finds reasonable cause to believe that the alleged father is the natural or presumed father of the child, the court shall enter an order compelling the alleged father to submit to a paternity blood test. As provided in subsection (1), reasonable cause may be established by affidavit of the child's mother.

History: **En. Sec. 4, Ch. 119, L. 1989.**

Cross-References

Affidavits, Title 26, ch. 1, part 10.

Paternity acknowledgment, 50-15-210.

40-5-234. Paternity blood tests — use of expert's affidavit — effect of test results. (1) The department shall appoint an expert who is qualified in examining genetic markers to conduct any paternity blood test required by 40-5-233. If the issue of paternity is referred to the district court under 40-5-236, the expert's completed and certified report of the results and conclusions of a paternity blood test is admissible as evidence without additional testimony by the expert if the laboratory in which the expert performed the test is accredited for parentage testing by the American association of blood banks. Accreditation may be established by verified statement or reference to published sources.

(2) An affidavit documenting the chain of custody of any blood specimen is admissible to establish such chain of custody.

(3) If the scientific evidence resulting from a blood test:

(a) conclusively shows that the alleged father could not have been the natural father, the question of paternity shall be resolved accordingly. A finding under this subsection is sufficient to overcome a presumption created by 40-6-105.

(b) shows a 95% or higher statistical probability of paternity, the alleged father is presumed to be the natural father of the child. This presumption may be rebutted in an appropriate action in district court by a preponderance of the evidence.

(c) does not exclude the alleged father and shows less than a 95% statistical probability of paternity, the test results may be weighed in conjunction with other evidence to establish paternity.

History: **En. Sec. 5, Ch. 119, L. 1989.**

Cross-References

Affidavits, Title 26, ch. 1, part 10.

Paternity acknowledgment, 50-15-210.

40-5-235. Effect of order establishing paternity — birth records — relief from order. (1) An administrative order of the department declaring the paternity of a child, docketed as provided in 40-5-227, establishes the legal existence of the parent and child relationship for all purposes and confers or imposes all parental rights, privileges, duties, and obligations.

(2) Upon the request of the mother or father of the child, the department shall file a copy of its order with the department of health and environmental sciences, which shall prepare a substitute certificate of birth, if necessary, consistent with the administrative order. The substitute certificate of birth is subject to the provisions of 40-6-123, with references to "court" taken to mean "department".

(3) Except for an order based on a voluntary acknowledgment of paternity, the department may set aside an administrative order establishing the paternity of a child upon the application of any affected party and upon a showing of any of the grounds and within the time frames provided in Rule 60(b) of the Montana Rules of Civil Procedure.

(4) An order of the department under 40-5-232 through 40-5-235 may be reviewed under the provisions of Title 2, chapter 4, part 7.

History: En. Sec. 6, Ch. 119, L. 1989.

Cross-References

Obligations of parents, Title 40, ch. 6, part 2.

Obligations of children, Title 40, ch. 6, part 3.

Paternity acknowledgment, 50-15-210.

Distribution of estate property, Title 72.

40-5-236. Referral of paternity issue to district court — record — parties — exclusion of other matters — fees. (1) If the scientific evidence resulting from a blood test does not exclude the alleged father and he continues to deny paternity, the department shall refer the matter to the district court for a determination based on the contents of the administrative hearing record and any further evidence that may be produced at trial. Except as otherwise provided in 40-5-231 through 40-5-237, proceedings in the district court shall be conducted pursuant to Title 40, chapter 6, part 1.

(2) The administrative record must include:

(a) a copy of the notice of paternity determination and the return of service thereof;

(b) the alleged father's written denial of paternity, if any;

(c) the transcript of the administrative hearing;

(d) the paternity blood test results and any report of an expert based on the results; and

(e) any other relevant information.

(3) Upon filing of the record with the district court, the court acquires jurisdiction over the parties as if they had been served with a summons and complaint. The department shall serve written notice upon the alleged father as provided in 40-5-231(2) that the issue of paternity has been referred to the district court for determination.

(4) In a proceeding in the district court, the department shall appear on the issue of paternity only. The court may not appoint a guardian ad litem for the child unless the court in its discretion determines that such an appointment is necessary and in the best interest of the child. Neither the mother nor the child is a necessary party, but either may testify as a witness.

(5) No other matter may be joined with an action to determine the existence or nonexistence of the parent and child relationship under this

section. The parties shall institute an independent action to address other issues, including visitation and custody.

(6) Except as provided in 25-10-711, the department is not liable for attorney fees, including fees for attorneys appointed under 40-6-119, or fees of a guardian ad litem appointed under 40-6-110.

History: En. Sec. 7, Ch. 119, L. 1989.

Cross-References

Paternity acknowledgment, 50-15-210.

40-5-237. District court paternity proceedings — objection to tests — additional tests. (1) If an alleged father objects to the procedures for or the results of a paternity blood test, he shall file a written objection with the court within 20 days after service of the notice required by 40-5-236(3). The court shall order an additional paternity blood test if a written objection is filed or at the request of the department. An additional test must be performed by the same or another expert who is qualified in paternity blood testing. Failure of the alleged father to make a timely challenge is considered a waiver of any defense to the test results or test procedures, including the chain of custody.

(2) In any hearing before the court or at trial, testimony relating to sexual intercourse of the mother with any person who has been excluded from consideration as a possible father of the child involved by the results of a paternity blood test is inadmissible in evidence.

(3) When a paternity blood test excludes an alleged father from possible paternity, the test shall be conclusive evidence of nonpaternity of the alleged father for all purposes in the district court.

History: En. Sec. 8, Ch. 119, L. 1989.

Cross-References

Paternity acknowledgment, 50-15-210.

40-5-238 through 40-5-240 reserved.

40-5-241. Repealed. Sec. 27, Ch. 631, L. 1993.

History: En. Sec. 17, Ch. 612, L. 1979; amd. Sec. 46, Ch. 439, L. 1981; amd. Sec. 2, Ch. 544, L. 1985; amd. Sec. 16, Ch. 549, L. 1989; amd. Sec. 26, Ch. 702, L. 1989.

40-5-242. Notice of support lien — civil liability upon failure to honor support lien or to comply with warrant for distraint. (1) The department may, at any time after asserting a support lien, serve a notice of the lien on any person, firm, corporation, association, or political subdivision or department of the state in possession of any real or personal property that is due, owing, or belonging to an obligor. For this purpose, personal property includes the obligor's share of a decedent's estate, workers' compensation benefits, and any proceeds or potential proceeds from suits at law.

(2) Except as provided in subsection (3), a person or entity is liable to the department in an amount equal to 100% of the value of a support lien or warrant for distraint or the value of real or personal property subject to a support lien or distrained by a warrant for distraint, whichever is less, together with costs, interest, and reasonable attorney fees, if the person or entity:

(a) pays over, releases, sells, transfers, or conveys real or personal property subject to a support lien, to or for the benefit of the obligor, after the person or entity receives actual notice of filing of the support lien; or

(b) fails or refuses to surrender upon demand property of an obligor when presented with a warrant for distraint by a sheriff or levying officer under the provisions of 40-5-247.

(3) A person or entity is not liable to the department under this section when:

(a) a written release or waiver of the support lien or warrant for distraint issued by the department has been delivered to the person or entity;

(b) a determination has been made in an adjudicative proceeding, either administrative or judicial, that a support lien does not exist or that the lien has been satisfied; or

(c) the property subject to a support lien has been transferred to, paid over to, or repossessed by a person or entity holding:

(i) a prior perfected lien;

(ii) a mortgage, the proceeds of which were used by the obligor to purchase real property; or

(iii) a perfected purchase money security interest, as defined by 30-9-107.

History: En. Sec. 18, Ch. 612, L. 1979; amd. Sec. 17, Ch. 549, L. 1989; amd. Sec. 17, Ch. 631, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 631 inserted (1) regarding service of support lien; at beginning of (2) inserted exception clause, after "person" substituted "or entity" for "firm, corporation, association, political subdivision, or department of the state", after "support" substituted "lien or warrant for distraint" for "debt that is the basis of the distraint or assignment of wages", and after "value of" substituted "real or personal property subject to a support lien or distrained by a warrant for distraint" for "the distrained property"; deleted former (1) that read: "(1) fails or refuses to deliver property pursuant to the order"; in (2)(b), after "property", substituted "of an obligor when presented with a warrant for distraint by a sheriff or levying officer under the provisions of 40-5-247" for "distrained under 40-5-241"; substituted (3) setting out conditions precluding liability to the Department for former (4) that read: "(4) fails or refuses to honor an assignment of wages presented by the department"; and made minor changes in style.

Cross-References

Costs, Title 25, ch. 10.

Debtors of judgment debtor and those holding his property to answer, 25-14-103.

Legal interest, 31-1-106.

Discharge or layoff of employee because of attachment or garnishment prohibited, 39-2-302.

Filing costs and attorneys' fees to be recovered on foreclosure of liens, 71-3-124.

40-5-243. Release of excess to obligor. If any person, firm, corporation, association, political subdivision, or department of the state has in its possession earnings, deposits, accounts, or balances in excess of the amount of the debt claimed by the department plus $100, that person or entity may release the excess to the obligor without liability under this part.

History: En. Sec. 19, Ch. 612, L. 1979; amd. Sec. 18, Ch. 549, L. 1989.

Cross-References

How writ executed — return of excess, 25-13-402.

40-5-244. Banks and savings and loan associations — service effective only as to branch office served. In the case of a bank, bank association, mutual savings bank, or savings and loan association maintaining branch offices, service of any notice or document authorized by this part is only effective as to the accounts, credits, or other personal property of the obligor in the particular branch upon which service is made.

History: En. Sec. 20, Ch. 612, L. 1979; amd. Sec. 19, Ch. 549, L. 1989.

Cross-References

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

40-5-245. Repealed. Sec. 27, Ch. 631, L. 1993.

History: En. Sec. 21, Ch. 612, L. 1979; amd. Sec. 47, Ch. 439, L. 1981.

40-5-246. Repealed. Sec. 27, Ch. 631, L. 1993.

History: En. Sec. 23, Ch. 612, L. 1979; amd. Sec. 48, Ch. 439, L. 1981; amd. Sec. 20, Ch. 549, L. 1989.

40-5-247. Warrant for distraint — effect — satisfaction of support lien — redemption. (1) (a) The department may issue a warrant for distraint to execute support liens established by 40-5-248 or to enforce and collect any money obligation authorized under this chapter.

(b) The warrant must be an order, under official seal of the department, directed to a sheriff of any county of the state or to any levying officer authorized by law to enforce a district court judgment. The order must command the recipient to levy upon and sell nonexempt real and personal property to satisfy the support lien upon which the warrant is based.

(c) A warrant must be signed by the director of the department or the director's designee.

(d) The warrant must be for the amount of the support lien or the amount of any other money obligation determined under this chapter, including interest and fees, if any.

(e) A warrant for distraint has the same effect as a writ of execution issued by a district court to enforce money judgments.

(2) (a) A warrant for distraint may be sent by the department to the sheriff or levying officer. Upon receipt of the warrant, the sheriff or levying officer shall proceed to execute upon the warrant in the same manner as prescribed for execution upon a judgment.

(b) A sheriff or levying officer shall return a warrant, along with any funds collected, within 90 days of the receipt of the warrant.

(c) Funds resulting from execution upon the warrant must first be applied to the sheriff's or levying officer's costs, any superior liens, the support lien, or other money obligation and to any inferior liens. Any amounts in excess of this distribution must be paid to the obligor.

(d) If the warrant is returned not fully satisfied, the department has the same remedies to collect the deficiency as are available for any civil judgment.

(3) A sheriff's or levying officer's levy against real and personal property of the obligor is not limited to property in possession of persons or other entities given notice of a support lien under 40-5-242.

(4) (a) Upon receiving payment in full of the unpaid warrant amount plus penalty and fees, if any, and accumulated interest, the department shall release the warrant.

(b) Upon receiving partial payment of the unpaid warrant amount or if the department determines that a release or partial release of the warrant will facilitate the collection of the unpaid amount, penalty, and interest, the department may release or may partially release the warrant for distraint. The department may release the warrant if it determines that the warrant is unenforceable.

(5) An obligor or other person or entity having an interest in real or personal property levied upon by a warrant for distraint at any time prior to sale of the property may pay the amount of the support lien or other money obligation and any costs incurred by the sheriff or levying officer serving the warrant. Upon payment in full, the property must be restored to the obligor or other person and all proceedings on the warrant must cease.

(6) An obligor or other person or entity having an interest in real property levied upon and sold by a sheriff or levying officer pursuant to a warrant for distraint may, within 240 days after sale of the property, redeem the property by making payment to the purchaser in the amount paid by the purchaser plus interest at the statutory interest rate payable on judgments recovered in the district court.

(7) At any time after distraint of property under a warrant for distraint, the department may release all or part of the seized property without liability if payment of the support lien or other money obligation is assured or if the action will facilitate collection of the support lien or other money obligation. The release or return does not operate to prevent future action to collect the warrant amount from the same or other property.

(8) The department may issue a warrant for distraint to collect a support lien or other money obligation under this section at any time within the statutory limitation period for enforcing and collecting delinquent child support.

(9) The use of the warrant for distraint is not exclusive, and the department may use any other remedy provided by law for the collection of child support amounts.

History: En. Sec. 27, Ch. 702, L. 1989; amd. Sec. 18, Ch. 631, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 631 substituted (1) regarding issuance of warrant for distraint for former (1) that read: "(1) After issuing a warrant, the department may file the warrant with the clerk of a district court. The clerk shall file the warrant in the judgment docket, with the name of the delinquent obligor listed as the judgment debtor"; deleted former (2) that read: "(2) Upon filing the warrant, there is a lien against all real and personal property of the delinquent obligor located in the county where the warrant is filed. The resulting lien is treated in the same manner as a properly docketed judgment lien, and the department may collect delinquent child support and enforce the lien in the same manner as a judgment is enforced. The lien is for the amount indicated on the warrant plus accrued interest from the date of the warrant"; in (2)(a), in two places, substituted "levying officer" for "authorized agent", near beginning of first sentence substituted "warrant for distraint" for "copy of the filed warrant", and in second sentence, before "warrant", deleted "copy of the filed"; in (2)(b), near beginning, substituted "levying officer" for "agent" and before "warrant" deleted "copy of the"; inserted (2)(c) regarding application of funds resulting from execution upon the warrant; inserted (3) providing that the levy against real and personal property of the obligor is not limited to property in possession of persons or other entities given notice of the lien; in (4)(a) and (4)(b), after "unpaid", substituted "warrant" for "child support" and once in (4)(a) and three times in (4)(b) substituted "warrant" for "lien"; in (4)(b), near middle after "release the", deleted "lien acquired by filing the"; inserted (5) through (7) regarding restoration, redemption, and release of property; inserted (8) clarifying that a warrant for distraint may be issued at any time within the statutory period; and made minor changes in style.

Cross-References

Execution of judgment, Title 25, ch. 13.

40-5-248. Lien against real and personal property — effect of lien — interest — warrant for distraint. (1) There is a support lien on the real and personal property of an obligor:

(a) when the department has entered a final decision in a contested case under this chapter that finds the obligor owes a sum certain debt either to this department or to an obligee, or both; or

(b) upon registration under 40-5-271 of a support order that includes finding that the obligor owes a sum certain amount of delinquent support.

(2) A support lien is for the amount required to satisfy:

(a) the sum certain debt shown in a final decision in a contested case under this chapter or the sum certain support debt included in any support order registered under 40-5-271;

(b) interest claimed under this section; and

(c) any fees that may be due under 40-5-210.

(3) A support lien has the priority of a secured creditor from the date the lien is perfected as provided by this section; however, the lien is subordinate to:

(a) any prior perfected lien or security interest;

(b) a mortgage, the proceeds of which are used by an obligor to purchase real property; or

(c) any perfected purchase money security interest, as defined in 30-9-107.

(4) Support liens remain in effect until the delinquency upon which the lien is based is satisfied or until 2 years after the child to whom the support lien is related attains the age of majority, whichever occurs first.

(5) The lien applies to all real and personal property owned by the obligor, if it can be located in the state. The lien applies to all real and personal property that the obligor can afterward acquire.

(6) The department shall keep a record of support liens asserted under this section in the registry of support orders established by 40-5-271.

(7) A support lien is perfected:

(a) as to real property, upon filing a notice of support lien with the clerk of the district court in the county or counties in which the real property is or may be located at the time of filing or at any time in the future;

(b) as to motor vehicles or other items for which a certificate of ownership is issued by the department of justice, upon filing a notice of support lien with the department of justice in accordance with the provisions of Titles 23 and 61;

(c) as to all other personal property, upon filing a notice of support lien in the place required to perfect a security interest under 30-9-401. The county clerk and recorder or the secretary of state, as appropriate, shall cause the notice of support lien to be marked, held, and indexed as if the notice of support lien were a financing statement within the meaning of the Uniform Commercial Code.

(8) A buyer for value of an obligor's personal property, other than motor vehicles and other items for which a certificate of ownership is issued by the department of justice, who buys in good faith and without knowledge of the support lien takes the property free of the support lien.

(9) (a) The department may charge interest on the support lien at the rate of 1% per month.

(b) Interest accrues at the close of the business day on the last day of each month and is calculated by multiplying the unpaid balance of the lien, including prior accrued interest existing at the end of the day, by the applicable rate of interest.

(c) A provision of this section may not be construed to require the department to maintain interest balance due accounts. The department may waive interest if waiver would facilitate the collection of the debt.

(d) Interest under this subsection (9) is in addition to and not in substitution for any other interest accrued or accruing under any other provision of law.

(10) (a) Upon receiving payment in full of the amount of the lien plus interest and fees, if any, the department shall take all necessary steps to release the support lien.

(b) Upon receiving partial payment of the support lien or if the department determines that a release or partial release of the lien will facilitate the collection of support arrearages, the department may release or partially release the support lien. The department may release the support lien if it determines that the lien is unenforceable.

(11) A support lien under this section is in addition to any other lien created by law.

(12) A support lien under this section may not be discharged in bankruptcy.

(13) Support liens provided for by this section may be enforced or collected through the warrant for distraint provided for by 40-5-247.

History: En. Sec. 25, Ch. 631, L. 1993.

40-5-249 and 40-5-250 reserved.

40-5-251. Debt payment schedule. At any time after notice to the obligor, the department may set or reset a level and schedule of payments to be paid upon the debt consistent with the income, earning capacity, and resources of the obligor.

History: En. Sec. 22, Ch. 612, L. 1979; amd. Sec. 21, Ch. 549, L. 1989.

Cross-References

Parents liable to Department for Aid to Families With Dependent Children benefits — schedule of payments, 53-4-248.

40-5-252. Interest on debts due — waiver. (1) The department may collect interest on any support debt due and owing to it at the statutory interest rate payable on judgments recovered in the courts of this state.

(2) No provision of this part may be construed to require the department to maintain interest balance due accounts. The department may waive interest if waiver would facilitate the collection of the debt.

History: En. Sec. 24, Ch. 612, L. 1979; amd. Sec. 22, Ch. 549, L. 1989.

Cross-References

Interest on judgments, 25-9-205.

40-5-253. Administrative findings and order — administrative remedies — judicial review. (1) It is the intent of this part that administrative findings and orders be subject to judicial review, but administrative remedies must be exhausted prior to judicial review. The administrative procedures described in this part are subject to review in the appropriate district court. Such review must be conducted pursuant to the Montana Administrative Procedure Act. Upon a showing by the department that administrative remedies have not been exhausted, the district court shall refuse review until such remedies are exhausted.

(2) Nothing in this part may be construed to abridge or in any way affect the obligor's right to counsel during any and all judicial or administrative proceedings pursuant to this part.

History: **En. Sec. 25, Ch. 612, L. 1979; amd. Sec. 23, Ch. 549, L. 1989.**

Cross-References

Right to counsel, Art. II, sec. 24, Mont. Const.

Judicial review of contested cases, Title 2, ch. 4, part 7.

40-5-254. Statutory limitations. Support debts ensuing as a result of determinations made through the administrative procedures described in this part are subject to statutory limitations as set forth in Title 27, chapter 2.

History: **En. Sec. 26, Ch. 612, L. 1979; amd. Sec. 24, Ch. 549, L. 1989.**

Cross-References

Lien extinguished by Statute of Limitations, 71-3-122.

40-5-255. Charging off child support debts as uncollectible. (1) Any support debt due the department from an obligor, which debt the department determines uncollectible, may be transferred from accounts receivable to a suspense account and cease to be accounted as an asset. If a warrant for distraint has been filed and the support debt has subsequently been charged off as uncollectible, the department shall issue a release of lien.

(2) At any time after 10 years from the date of termination of the support obligation, the department may charge off as uncollectible any support debt upon which the department finds there is no available, practical, or lawful means by which the support debt may be collected. A proceeding or action under the provisions of this part may not be begun after expiration of the 10-year period to institute collection of a support debt. This part may not be construed to render invalid or nonactionable a warrant for distraint issued by the department prior to the expiration of the 10-year period or an assignment of earnings executed prior to the expiration of the 10-year period.

History: **En. Sec. 27, Ch. 612, L. 1979; amd. Sec. 49, Ch. 439, L. 1981; amd. Sec. 3, Ch. 561, L. 1985; amd. Sec. 25, Ch. 549, L. 1989; amd. Sec. 19, Ch. 631, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 631 near beginning of first sentence of (2) substituted "10 years from the date of termination of the support obligation" for "6 years from the date a support debt was incurred", in second sentence substituted "10-year" for "6-year", and near middle of third sentence, after "distraint", substituted "issued by the department" for "filed with the clerk of court" and in two places substituted "10-year" for "6-year"; and made minor changes in style.

Cross-References

Maintenance, 40-4-203.

Child support, 40-4-204.

"Support obligation" — spousal maintenance, 40-5-201.

Department authorized to enforce spousal maintenance awards, 40-5-207.

Lien extinguished by Statute of Limitations, 71-3-122.

40-5-256. Employee debtor rights protected — limitation. No employer may discharge or prejudice an employee for reason that an assignment of earnings has been presented in settlement of a support debt or that a warrant for distraint has been served against the employee's earnings. This provision does not apply if more than three warrants are served upon the same employer within any period of 12 consecutive months.

History: En. Sec. 28, Ch. 612, L. 1979; amd. Sec. 50, Ch. 439, L. 1981.

Cross-References

Discharge or layoff of employee because of attachment or garnishment prohibited, 39-2-302.

Assignments, 40-4-207.

40-5-257. Assignment of earnings to be honored — effect. (1) Any person, firm, corporation, association, political subdivision, or department of the state employing an obligor shall honor, according to its terms, a duly executed assignment of earnings, whether executed voluntarily or pursuant to a support order presented by the department. This requirement to honor the assignment of earnings and the assignment of earnings itself are applicable whether the earnings are to be paid presently or in the future and continue in force until released in writing by the department.

(2) Payment of money pursuant to an assignment of earnings presented by the department serves as full acquittance under any contract of employment. The state shall defend and hold harmless any action taken pursuant to the assignment of earnings. The department is released from liability for improper receipt of money under an assignment of earnings upon return of any money so received.

History: En. Sec. 29, Ch. 612, L. 1979; amd. Sec. 26, Ch. 549, L. 1989.

Cross-References

Property exempt from execution — earnings of judgment debtor, 25-13-614.

Discharge or layoff of employee because of attachment or garnishment prohibited, 39-2-302.

Assignments, 40-4-207.

40-5-258 through 40-5-260 reserved.

40-5-261. Procedures for making information available to consumer reporting agencies. (1) The department may make information about a support debt available to consumer reporting agencies, as defined in 31-3-102, upon request. The department may charge a fee to recover the cost of responding to requests for support debt information. The department shall provide advance notice to the obligor concerning the proposed release of information. However, lack of actual notice does not preclude the release of information to consumer reporting agencies. The notice may be incorporated into any notice served pursuant to Title 17, chapter 4, part 1; Title 40, chapter 5, part 4; this part; or the federal income tax refund intercept program under 42 U.S.C. 664. The notice must inform the obligor of the methods available for contesting the accuracy of the information.

(2) If contacted by an obligor wishing to contest the accuracy of information proposed for release to consumer reporting agencies, the department shall conduct an informal administrative review, separately or in conjunction with a hearing on any other matter concerning the obligor's support obligation, to determine the accuracy of the information. The accuracy of information provided by the department to consumer reporting agencies may be

contested in accordance with the procedures provided in 31-3-124. An obligor dissatisfied with the outcome of a reinvestigation conducted by a consumer reporting agency may receive an administrative hearing on the accuracy of the information by filing a written request with the department. The hearing must be conducted in accordance with 40-5-226, and the resulting findings are subject to judicial review as provided in 40-5-253.

(3) The department shall within 30 days notify all consumer reporting agencies that were provided information pursuant to this section if a reported support debt is paid in full or is no longer being enforced by the department.

History: En. Sec. 6, Ch. 418, L. 1989.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Consumer reporting agencies, Title 31, ch. 3, part 1.

40-5-262. Rules. The department shall adopt rules to implement this section, including rules:

(1) providing for advance notice to the obligor of support debt information requested under 40-5-261;

(2) establishing the procedure for contesting the accuracy of information proposed for release to consumer reporting agencies;

(3) providing for consideration of the obligor's payment record, the availability of other remedies, and other matters relevant to determining whether the release of information would promote the collection of a support debt or would be inappropriate under the circumstances; and

(4) governing the format and frequency of reports to consumer reporting agencies.

History: En. Sec. 7, Ch. 418, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

40-5-263. Central clearinghouse — interstate enforcement services — powers and duties of the department. (1) The department shall establish a clearinghouse for the registration of all interstate IV-D cases referred to the department by other states. The clearinghouse shall serve as the central point for the receipt and dissemination of information regarding interstate enforcement requests, including but not limited to:

(a) petitions under the Revised Uniform Reciprocal Enforcement of Support Act or the Uniform Interstate Family Support Act; and

(b) wage withholding requests under part 4 of this chapter.

(2) (a) A case must be referred to the clearinghouse to be processed as a IV-D case and receive the benefits of IV-D status and clearinghouse services.

(b) The clearinghouse may accept any interstate IV-D referral made by interstate application or by petition under the Revised Uniform Reciprocal Enforcement of Support Act or the Uniform Interstate Family Support Act. An application must be made on forms prescribed by the department.

(3) Upon certification by the initiating state that a case filed in the registry of foreign support orders, including a petition under the Revised Uniform Reciprocal Enforcement of Support Act or the Uniform Interstate Family Support Act, is eligible for IV-D services and that the obligor resides, has property, or derives income in this state, the department may establish

or enforce a child support obligation by any appropriate statute, including the remedies in this chapter.

(4) If necessary, the department shall establish the paternity of the child.

(5) The clearinghouse shall:

(a) review and acknowledge receipt of any interstate IV-D referral;

(b) request missing information from the initiating state;

(c) determine appropriate enforcement remedies and forward the referral to the appropriate enforcement unit;

(d) provide status updates to the initiating state, including the location of the responsible enforcement unit;

(e) locate an obligor and the obligor's assets, if necessary; and

(f) initiate a IV-D referral if services are provided by the department to a resident of this state and the obligor resides outside the state.

(6) If the department is providing support enforcement services to a resident of this state, the director or the director's designee may certify any interstate petition, application, and referral, including a petition under part 1 of this chapter.

History: En. Sec. 2, Ch. 287, L. 1989; amd. Sec. 56, Ch. 328, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 328 in (1)(a), (2)(b), and (3) inserted reference to the Uniform Interstate Family Support Act; and made minor changes in style.

Cross-References

Establishment of paternity through administrative action, 40-5-231 through 40-5-237.

40-5-264. Cooperative agreements. (1) The department may enter into cooperative agreements with any person, firm, corporation, association, political subdivision, or department of this state as a cooperating contractor to provide enforcement services.

(2) A cooperating contractor:

(a) shall act as an independent support enforcement contractor if the cooperating contractor provides enforcement services; and

(b) may pursue any remedy available to the department, as limited by the terms of the cooperative agreement.

(3) The department may refer an enforcement case to a cooperating contractor in the county where the obligor resides.

History: En. Sec. 3, Ch. 287, L. 1989.

40-5-265 through 40-5-270 reserved.

40-5-271. Registration of support orders. (1) The department shall establish and maintain a support order registry.

(2) The registry must contain the support orders issued by the department.

(3) In a IV-D case, the department shall, upon the request of the obligor or the obligee, or may register a support order of a district court of this state or a support order of a court or administrative agency of another state with jurisdiction to enter the order. A certified copy of the order to be registered must accompany the written request for registration.

(4) Upon registration, the support order must be treated in the same manner and have the same effect as a support order issued by the department, and an abstract of the order may be filed under the provisions of 40-5-227.

Review of the order under 40-5-272 is available only when the department is providing child support enforcement services for the order.

History: **En. Sec. 1, Ch. 266, L. 1991.**

40-5-272. Application for review of child support orders. (1) Upon the application of the department, the obligor, or the obligee, a hearing officer appointed pursuant to 40-5-273 shall review support orders filed with the support order registry. The purpose of the review is to determine whether the support order should be modified in accordance with the guidelines.

(2) Jurisdiction to conduct the review and to issue a modifying order under 40-5-273 is authorized when:

(a) the obligor and the obligee reside in this state; or

(b) jurisdiction can be obtained as provided under 40-5-231.

(3) Jurisdiction to review a child support order under this section does not confer jurisdiction for any other purpose, such as custody or visitation disputes.

(4) Criteria constituting sufficient grounds for review of a child support order include:

(a) inconsistency with this state's guidelines, unless the inconsistency is considered negligible under department rules; or

(b) availability of health insurance coverage to the obligor's child through the obligor's employment or other group insurance.

(5) The department shall make available procedures and forms that allow the obligor or the obligee to complete the review process without legal counsel.

(6) To the extent that they are consistent with this section, the provisions of 40-5-145, 40-5-149, and 40-5-150 apply to this section.

History: **En. Sec. 2, Ch. 266, L. 1991; amd. Sec. 50, Ch. 328, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 328 in (2)(b) substituted "40-5-231" for "40-4-210"; deleted (2)(c) allowing jurisdiction when the obligor resides in this state and the Department is providing IV-D enforcement services; and inserted (6) listing sections of Uniform Interstate Family Support Act that apply to this section.

40-5-273. Administrative review of child support orders — modifying orders. (1) A review application setting forth facts meeting any of the criteria for review of a child support order established in 40-5-272 must be scheduled for an administrative hearing, and a hearing officer must be appointed by the department. Unless the hearing officer determines under rules of the department that an in-person hearing is necessary, the hearing must be conducted by telephone conference. The order scheduling the hearing must be served on the obligor and the obligee at least 60 days before the hearing. The order must include the following information as an exception to 2-4-601:

(a) the date and time for the hearing and, if appropriate, the place for the hearing;

(b) a statement of the purpose, objectives, and possible consequences of the review;

(c) a statement of the right of the obligor and the obligee to request the hearing officer to issue subpoenas compelling the appearance of witnesses and the production of documents for the hearing; and

(d) a requirement that the obligor and the obligee provide the hearing officer with telephone numbers at which they and their witnesses may be contacted for the hearing.

(2) The hearing officer may issue an order commanding the obligor or the obligee, or both, to produce financial information. The order must be personally served with the order scheduling the hearing. The hearing officer may also issue subpoenas ordering the department or other parties to produce information in their possession about the obligor and the obligee that may be reasonably necessary for application of the guidelines. Any information so obtained by the hearing officer must be provided to the department and other parties prior to the hearing.

(3) The requested modification of the order must be determined on the evidence submitted to the hearing officer under the following conditions:

(a) If an applicant other than the department fails to provide a telephone number for the hearing or fails to be at the number provided when telephoned for the hearing, the failure is considered a withdrawal of the application.

(b) If a party other than the applicant fails to provide a telephone number for the hearing or fails to be at the number provided when telephoned for the hearing, the failure is considered to mean that the party does not oppose the modification.

(c) If the department is the applicant and if either the obligor or the obligee, or both, fails to provide a telephone number for the hearing or fails to be at the number provided when telephoned for the hearing, the failure is considered an admission that the party or parties do not oppose the modification.

(4) An order entered under the circumstances described in subsection (3)(a), (3)(b), or (3)(c) becomes final within 10 days of issuance unless a party provides the hearing officer an affidavit showing good cause for failure to provide a telephone number or failure to be available for the hearing when telephoned.

(5) A provision of law may not be construed to mean that an obligor or an obligee is a client of the department, and the department is not considered a party to the action.

(6) (a) In addition to the powers and duties provided by other law, the hearing officer shall, to ensure the equitable determination of a support obligation, during a review hearing:

(i) question witnesses in a nonadversarial manner to elicit full disclosure of all pertinent facts;

(ii) introduce evidence on behalf of the parties;

(iii) apply the guidelines to the facts elicited from the hearing; and

(iv) inquire as to any circumstances that may require variance from the guidelines.

(b) If a party is represented by legal counsel, the hearing officer may allow the counsel to present that party's case.

(7) The hearing officer shall determine a support obligation in accordance with the guidelines and shall issue a modifying order. If the hearing officer determines that the difference between the existing support order and the amount determined under the guidelines is negligible under rules issued by

the department, the modifying order may not change the amount of the support obligation. Even though the review may indicate that a modification of the support obligation is appropriate, the department may not modify the support order if the hearing officer determines, after the review hearing, that to do so would not be in the best interests of the child under the rules issued by the department. An increase in child support is presumed to be in the best interests of the child unless, after a review hearing, either the obligor or the obligee demonstrates it would not be in the best interests of the child. The modifying order must prospectively modify the underlying support order from the date of service of the order scheduling the hearing.

(8) The hearing officer shall make a written determination whether health insurance is available to the child of the obligor through the obligor's employment or other group insurance. If the hearing officer determines health insurance is available to the child of the obligor, the hearing officer shall issue a modifying order that requires the obligor to obtain and keep health insurance for the child. If the hearing officer determines that health insurance is not available to the child of the obligor, he shall issue a modifying order containing the notices provided in subsection (9). An order to provide health insurance is presumed to be in the best interests of the child unless, after a review hearing, either the obligor or the obligee demonstrates it would not be in the best interests of the child.

(9) In addition to complying with other requirements of law, the modifying order must include the following notices and warnings:

(a) that the obligor shall keep the department informed of the name and address of his current employer and information on health insurance available to the obligor through the obligor's employment or other group insurance;

(b) that the obligor shall obtain and keep health insurance for the child of the obligor whenever it is available through the obligor's employment or other group insurance; and

(c) that the modifying order is subject to future administrative review and modification by the department upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under IV-D.

(10) Orders entered under this section are final agency decisions, subject to judicial review pursuant to the Montana Administrative Procedure Act. All orders entered under this section must notify the parties that the order is subject to judicial review under Title 2, chapter 4, part 7.

(11) The parties to the support order and the department when it is providing services under IV-D may enforce the support order or modify that order independently, as provided in 40-4-208 and 53-2-613(4)(d).

History: **En. Sec. 3, Ch. 266, L. 1991.**

40-5-274. Child support payments to follow the child. (1) A support order issued or modified under this part must contain a provision requiring the child support to be paid to:

(a) the legal custodian of the minor child;

(b) (i) any other person, organization, or agency having legal physical custody of the minor child or collecting child support on behalf of the minor child under a legal assignment of rights; or

(ii) the court for the benefit of the minor child;

(c) any other person or agency designated as caretaker of the minor child by agreement of the legal custodian; or

(d) any assignee or other person, organization, or agency authorized to receive or collect child support.

(2) An order that omits the provision required by subsection (1) is subject to the requirements of subsection (1) without need for an amendment to the order or for any further action by the department.

History: En. Sec. 24, Ch. 631, L. 1993.

Part 3

Child Support Income Deduction

Part Cross-References

Child support, 40-4-204.

Assignments of earnings, 40-4-207.

Administrative enforcement of support, Title 40, ch. 5, part 2.

Child Support Enforcement Act of 1985, Title 40, ch. 5, part 4.

Obligations of parents for the support and education of their children, 40-6-211.

40-5-301. Short title. This part may be cited as the "Child Support Income Deduction Act of 1981".

History: En. Sec. 1, Ch. 171, L. 1981.

40-5-302. Purpose. The purpose of this part is to provide a direct method of deducting money from a person's income for the payment of child support if that person has been delinquent in the payment of court-ordered child support.

History: En. Sec. 2, Ch. 171, L. 1981.

Cross-References

Child support, 40-4-204.

Obligations of parents for support and education of their children, 40-6-211.

40-5-303. Petition for income deduction — who may initiate. A petition for an income deduction for the payment of delinquent child support payments may be made by:

(1) the person named as the recipient of the child support payments in the child support order;

(2) the child or the guardian of the child named in the child support order; or

(3) the department of family services or the department of social and rehabilitation services of the state of Montana.

History: En. Sec. 3, Ch. 171, L. 1981; amd. Sec. 31, Ch. 609, L. 1987; amd. Sec. 23, Ch. 702, L. 1989.

Cross-References

Representation of child, 40-4-205.

Enforcement of minor's rights, 41-1-202.

40-5-304. When child support payments considered delinquent. (1) Nonpayment of child support required by any order of a district court or by a similar order of a court of another jurisdiction becomes delinquent under this part when the amount owed is equal to 3 months of child support payments.

(2) Child support payments may be considered delinquent under this part only in reference to a court order setting child support payments.

(3) In the case of support orders not subject to immediate income withholding under 40-5-315, including cases in which the court or administrative authority has made a finding of good cause or alternative arrangement, the income of the obligor is subject to withholding under this part beginning on the date on which the obligor is found to be delinquent in the payment of support due under a support order in an amount equal to at least 3 months' support payments. Intervening agreements or orders establishing a schedule for payment of delinquent support do not prevent income withholding under this part. For the purposes of this section, "alternative arrangement" has the meaning provided in 40-5-315(3)(b).

History: En. Sec. 4, Ch. 171, L. 1981; amd. Sec. 4, Ch. 635, L. 1991.

Cross-References

Payment of maintenance or support to court, 40-4-206.

40-5-305. Notice. On petition for income deductions for payment of delinquent child support, the district court shall cause notice to be served upon the obligor, stating that if the delinquency is not discharged within 15 days, the court will order an income deduction for the payment of the delinquent child support and for the payment of current child support as it becomes due and payable. The notice shall also state that the obligor may contest the allegation that child support payments are delinquent.

History: En. Sec. 5, Ch. 171, L. 1981.

Cross-References

Service by an officer, Title 25, ch. 3, part 2.

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

40-5-306. Discharge of delinquency. If the obligor pays the total amount of child support due and payable within the 15 days specified in 40-5-305, no order for deduction may issue. This discharge of delinquency does not affect or otherwise limit any action as a result of any subsequent delinquencies.

History: En. Sec. 6, Ch. 171, L. 1981.

40-5-307. Delinquency of child support denied — hearing. If the obligor responds to the notice and denies that child support payments are delinquent, the district court shall hold a hearing to determine whether or not there is a deficiency in child support payments sufficient to be delinquent under 40-5-304.

History: En. Sec. 7, Ch. 171, L. 1981.

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

40-5-308. Order for deduction from income for child support payments. (1) If the obligor fails to respond to notice within 15 days or if the district court determines that the obligor is delinquent in payment of child support as provided in 40-5-304, the district court shall issue an order to the obligor's employer ordering a deduction from the obligor's wages or salary for the payment of child support.

(2) The order shall state:

(a) the action involved;

(b) the total amount of back child support due and the amount of each court-ordered installment of child support;

(c) the amount to be deducted from the wages or salary of the obligor each pay period and the amount, if any, allowed to the employer under subsection (2) of 40-5-309 as a fee for handling the deduction;

(d) the length of time the order is to remain in effect, if ascertainable; and

(e) to whom the deduction is to be made payable and where it is to be forwarded by the employer.

History: En. Sec. 8, Ch. 171, L. 1981.

Cross-References

Earnings of judgment debtor, 25-13-614.

What property subject to attachment, 27-18-102.

Discharge or layoff of employee because of attachment or garnishment prohibited, 39-2-302.

40-5-309. Amount to be deducted from income. (1) The amount of money to be deducted each pay period from the obligor's income shall be:

(a) (i) the amount of money necessary to pay current installments of child support as they become due and payable; plus

(ii) the amount of money which, when deducted in equal amounts each payday, will pay off all outstanding child support payments delinquent within 2 years; or

(b) not less than 25% of the obligor's disposable earnings.

(2) The district court may allow a fee of not to exceed $5 per deduction, which the employer may deduct from the obligor's wages or salary for the expense of administering the deduction.

(3) The total amount to be deducted under subsections (1) and (2) may not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. 1673(b), as amended.

(4) Except as provided in 40-5-315, the child support income deduction shall cease when there is no past-due child support owing unless the district court orders continued income deductions for payment of child support installments as they become due and payable.

History: En. Sec. 9, Ch. 171, L. 1981; amd. Sec. 1, Ch. 625, L. 1987; amd. Sec. 17, Ch. 635, L. 1991.

Cross-References

Payment of maintenance or support to court, 40-4-206.

40-5-310. Priority of income deduction. An order for the deduction of income for the payment of delinquent child support payments takes precedence over any:

(1) assignment of wages or salary;

(2) voluntary deductions from the obligor's wages or salary; and

(3) other court-ordered garnishment of wages or salary.

History: En. Sec. 10, Ch. 171, L. 1981.

Cross-References

Earnings of judgment debtor exempt from execution, 25-13-614.

What property subject to attachment, 27-18-102.

Wage brokers — restrictions upon assignment of wages or salary, 31-1-304.

Assignments for benefit of creditors, Title 31, ch. 2, part 2.

40-5-311. Remedy not exclusive. The remedy provided in this part for the collection of unpaid child support is not exclusive. This part provides a remedy in addition to all other remedies in law available to obligees of unpaid child support.

History: **En. Sec. 11, Ch. 171, L. 1981.**

Cross-References

Remedies additional, 40-5-144, 40-5-404.

40-5-312 through 40-5-314 reserved.

40-5-315. Immediate income deductions. (1) Notwithstanding any provision in this part requiring a delinquency as a prerequisite to an order for income deductions, except as provided in subsection (2), the salaries and wages of a person obligated to pay child support by an order of a district court issued after October 1, 1991, are subject to an immediate deduction order under 40-5-308 on the effective date of the order, regardless of whether there is a delinquency.

(2) An obligor's salaries and wages are not subject to deduction under this section in any case in which the district court finds:

(a) that there is good cause not to require immediate deduction; or

(b) that there is an alternative arrangement between the parties for the payment of support that provides sufficient security to ensure compliance with the arrangement.

(3) (a) For the purposes of subsection (2), a finding of good cause not to require immediate deduction must, at a minimum, be based on:

(i) a written determination and explanation by the district court as to why implementation of immediate deductions is not in the best interests of the child; and

(ii) in cases involving the modification of support orders, proof of timely payment of previously ordered support.

(b) As used in subsection (2)(b), "alternative arrangement" means a written agreement that is signed by the obligor and obligee and, in cases in which there is an assignment of support rights under 53-2-613, signed by the department of social and rehabilitation services, and that has been approved and entered into the record by the district court that issued or modified the support order.

(4) The clerk of court shall administer immediate income deductions under this section. The clerk of court, at any time after docketing the support order or modification of a support order, at the request of the obligee, and without need for amendment to the support order or for any further action by the district court, shall issue the order for income deductions provided for by 40-5-308 for service upon the obligor's employer. The deduction order must direct the employer to promptly deliver the amount deducted to the clerk of court for distribution to the obligee.

(5) Wage deductions under this section may be terminated only when:

(a) the obligation to pay support has terminated and all arrearages are paid in full;

(b) the obligor requests termination and the obligee and obligor have entered into an alternative arrangement as set forth in subsection (2)(b); or

(c) the department has superseded the deduction order under authority of Title 40, chapter 5, part 4.

(6) If a delinquency occurs subsequent to issuance of an immediate deduction order or if arrearages occur prior to beginning the deductions, the arrearages may be added to the deduction order only after compliance with the notice of hearing requirements of 40-5-305.

(7) (a) After October 1, 1991, whenever a support order is registered as provided by 40-5-184 or other law, the support order is subject to immediate orders to deduct income under this section.

(b) Withholding income under this section must be imposed when an obligor has wages or salaries derived from within this state and the support order was issued in another state.

(8) This section applies only to support orders that are not being enforced by the department under Title IV-D of the Social Security Act. The withholding of income for support orders being enforced by the department is provided for in Title 40, chapter 5, part 4, and those procedures, if applicable, supersede the provisions of this section.

History: En. Sec. 16, Ch. 635, L. 1991.

Part 4

Child Support Enforcement Act Administrative Income Withholding

Part Cross-References

Administrative enforcement of support, Title 40, ch. 5, part 2.

Child support income deduction, Title 40, ch. 5, part 3.

40-5-401. Short title. This part may be cited as the "Child Support Enforcement Act".

History: En. Sec. 1, Ch. 571, L. 1985; amd. Sec. 6, Ch. 702, L. 1989.

40-5-402. Purpose — applicability. (1) The purpose of this part is to provide a more effective and efficient way to guarantee the support of dependent children by the person or persons primarily responsible for such support by ensuring that the support of children is the highest priority in the allocation of a responsible parent's income.

(2) This part applies to all support obligations being enforced or collected by the department of social and rehabilitation services pursuant to Title IV-D of the Social Security Act.

(3) When the requirements of this part are met, an employer or other payor of income to a person having a support obligation under a court or administrative order must be directed to withhold from the person's income in an amount sufficient to meet the support obligation and to defray any arrearages that are due or may become due.

(4) Unless an exception under 40-5-411(4) is contained in a support order, withholding of income is required under this part without need for any amendment to the support order involved or any action by the court or entity that issued the support order even though the support order did not address withholding or the support order provided for other payment arrangements.

(5) Withholding, once commenced, applies to all current and subsequent payors of income to a person obligated to pay support until the withholding is terminated as provided by this part.

(6) The provisions for income withholding under this part take precedence over any other law or court order.

History: **En. Sec. 2, Ch. 571, L. 1985; amd. Sec. 5, Ch. 635, L. 1991.**

Cross-References

Child support, 40-4-204.

Obligations of parents, Title 40, ch. 6, part 2.

40-5-403. Definitions. As used in this part, the following definitions apply:

(1) "Alternative arrangement" means a written agreement signed by the obligor and obligee, and signed by the department in the case of an assignment of rights under 53-2-613, that has been approved and entered in the record of the court or administrative authority issuing or modifying the support order.

(2) "Department" means the department of social and rehabilitation services provided for in 2-15-2201.

(3) "Income" means any form of periodic payment to a person, including earnings and wages. However, income does not include:

(a) any amount required by law to be withheld, other than creditor claims, including federal, state, and local taxes and social security; and

(b) any amounts exempted from judgment, execution, or attachment by federal or state law.

(4) "Obligee" means either a person to whom a duty of support is owed or a public agency of this or another state to which a person has assigned the right to receive current and accrued support payments.

(5) "Obligor" means a person who owes a duty to make payments under a support order.

(6) "Payor" means any payor of income to an obligor on a periodic basis and includes any person, firm, corporation, association, employer, trustee, political subdivision, state agency, or any agent thereof, who is subject to the jurisdiction of the courts of this state under Rule 4B of the Montana Rules of Civil Procedure.

(7) "Support order" means an order of the district court of the state of Montana, an order of a court of appropriate jurisdiction of another state, an administrative order established pursuant to proceedings under part 2 of this chapter, or an order established by administrative hearing process of an agency of another state with functions similar to those of the department set forth in part 2 of this chapter, that provides a set and determinable amount for temporary or final periodic payment of funds for the support of a child. Support order further includes the following:

(a) an order for reimbursement of public assistance money paid by a public agency for the benefit of a minor child;

(b) an order for maintenance to be paid to a former spouse when the former spouse is the custodial parent of a child for whom child support is awarded under the same order; and

(c) an order requiring payment of interest due on unpaid judgments for child support.

History: **En. Sec. 3, Ch. 571, L. 1985; amd. Sec. 24, Ch. 702, L. 1989; amd. Sec. 6, Ch. 635, L. 1991.**

Cross-References

Interest on judgments, 25-9-205.

Earnings of judgment debtor exempt from execution, 25-13-614.

Maintenance, 40-4-203.
Child support, 40-4-204.
Department authorized to enforce maintenance awards, 40-5-207.
Inspections of birth records for child support actions, 50-15-112, 50-15-206.

40-5-404. Other remedies available. The remedies provided in this part are in addition to and not in substitution for any other remedy that may otherwise be available to the department, and the department may simultaneously pursue other remedies to enforce a support obligation or to collect support arrearages.

History: En. Sec. 20, Ch. 571, L. 1985; amd. Sec. 7, Ch. 702, L. 1989.

Cross-References

Administrative enforcement of support, Title 40, ch. 5, part 2.
Child support income deduction, Title 40, ch. 5, part 3.

40-5-405. Rulemaking authority. The department shall adopt rules and forms to participate in and carry out the provisions of this part.

History: En. Sec. 21, Ch. 571, L. 1985.

Cross-References

"Rule" defined, 2-4-102.
Adoption and publication of rules, Title 2, ch. 4, part 3.

40-5-406 through 40-5-410 reserved.

40-5-411. Immediate income withholding. (1) Except as provided in subsection (4), in the case of a child support order, whether temporary or final, that is issued by a court or administrative authority of this state after January 1, 1990, the income of the obligor is subject to immediate withholding under this part regardless of whether support payments are in arrears.

(2) After October 1, 1991, when a support order of another state is registered in Montana under the provisions of 40-5-184 or other applicable law, the support obligation is subject to immediate income withholding under this section.

(3) The department may direct the payor of income to the obligor to commence the withholding of the obligor's income on:

(a) the effective date of the support order or the date of registration of the support order; or

(b) the date, if any, that the department becomes authorized by law to provide child support enforcement services.

(4) An obligor's income is not subject to immediate withholding if the court or administrative authority that issued or modified the support order finds:

(a) that there is good cause not to require immediate withholding; or

(b) that there is an alternative arrangement between the parties for the payment of support that provides sufficient security to ensure compliance with the arrangement.

(5) For the purposes of subsection (4), any finding of good cause not to require immediate income withholding must be based on at least:

(a) a written determination and explanation by the court or administrative authority as to why implementation of immediate income withholding would not be in the best interests of the child; and

(b) proof of timely payment of previously ordered support in cases involving the modification of support orders.

(6) Immediate withholding under this section terminates only:

(a) upon the conditions provided in 40-5-417; or

(b) at the request of the obligor if:

(i) withholding has not been previously terminated and subsequently initiated under 40-5-412 because of a delinquency; and

(ii) the obligor meets one of the exemptions under subsection (4).

History: En. Sec. 4, Ch. 571, L. 1985; amd. Sec. 8, Ch. 702, L. 1989; amd. Sec. 7, Ch. 635, L. 1991.

Cross-References

Property exempt from execution, Title 25, ch. 13, part 6.

40-5-412. Delinquency income withholding. (1) In the case of support orders not subject to immediate income withholding under 40-5-411, including cases in which the court or administrative authority has made a finding of good cause or determines that an alternative arrangement exists, the income of the obligor is subject to withholding under this part beginning on the date on which the obligor is found to owe unpaid support under the support order in an amount equal to or in excess of 1 month's support payment. Intervening agreements or orders establishing a schedule for payment of delinquent support do not prevent income withholding under this part.

(2) Notwithstanding the provisions of subsection (1), income withholding must be initiated, without regard to whether there is an arrearage, on the earlier of:

(a) the date the obligor requests that withholding begin; or

(b) at the request of the obligee if the obligor is found, after an opportunity for hearing under 40-5-414, to be delinquent under the terms of an alternative arrangement for the payment of support.

(3) To accomplish the purpose of subsection (1), the department shall monitor all support payments not otherwise subject to immediate withholding. To facilitate monitoring, the department by written notice to the obligor may direct an obligor who does not owe unpaid child support equal to or in excess of 1 month's support payment to pay all support through the department, notwithstanding a court order directing payments to be made to the obligee or clerk of court.

(4) The only basis for contesting withholding under this section is a mistake of fact, which includes a mistake:

(a) concerning the obligor's identity;

(b) concerning the existence of the support obligation;

(c) concerning the amount of support to be paid;

(d) in the determination that the delinquent support amounts owed are equal to or greater than 1 month's support payment;

(e) in computation of delinquent support amounts owed; or

(f) in the allegation that the obligor is in default of an alternative agreement.

History: En. Sec. 5, Ch. 571, L. 1985; amd. Sec. 9, Ch. 702, L. 1989; amd. Sec. 41, Ch. 16, L. 1991; amd. Sec. 8, Ch. 635, L. 1991.

40-5-413. Notice of intent to withhold income. (1) Prior to service of an initial order or a modification of an existing order on the payor under 40-5-415, the department shall serve upon the obligor a notice of the intended action when:

(a) income withholding is initiated under 40-5-412 because of a delinquency;

(b) additional arrearages have accrued subsequent to the issuance of an order to withhold and the department proposes to add those arrearages to the withholding order; or

(c) immediate withholding has commenced for current support and there are arrearages due for a period prior to entry of the order to withhold that the department proposes to add to the withholding order.

(2) The notice must contain a statement:

(a) of the amount to be withheld, including a computation showing the period and total amount of the arrearages as of the date of the notice;

(b) that withholding applies to all current and subsequent payors;

(c) of the obligor's right to a hearing under 40-5-414 to contest the initiation of income withholding or modification of an existing order on the ground that the intended action is not proper because of mistake of fact, as provided in 40-5-412(4);

(d) of the period of time within which the obligor must request a hearing and that failure to request the hearing within the time limit will result in income withholding orders being served upon the payor for the amount stated in the notice; and

(e) in those cases in which withholding is being initiated at the request of an obligee without regard to whether there is an arrearage as provided in 40-5-412(2), a statement that the obligor can require the obligee to appear and show proof that the obligor is not meeting the terms of the alternative arrangement.

(3) The notice must be served upon the obligor personally or by certified mail.

History: En. Sec. 6, Ch. 571, L. 1985; amd. Sec. 10, Ch. 702, L. 1989; amd. Sec. 9, Ch. 635, L. 1991.

Cross-References

Due process of law, Art. II, sec. 17, Mont. Const.

Certified mail, 1-1-202.

Actual and constructive notice, 1-1-217.

Notice and opportunity to be heard, Title 2, ch. 3, part 1.

Montana Administrative Procedure Act, Title 2, ch. 4.

40-5-414. Hearing. (1) To contest the withholding of income initiated under 40-5-412 because of a delinquency, an obligor may within 10 days of being served with notice of intent to withhold income under 40-5-413 file with the department a written request for an administrative hearing to be held pursuant to the contested case provisions of Title 2, chapter 4, part 6.

(2) Venue for the administrative hearing may be in the county where the obligor resides if the obligor resides in this state, the county in which the payor or the payor's agent is located, or the county in which the department or any of its regional offices is located.

(3) The administrative hearing must be held by teleconferencing methods unless the obligor or the department expressly requests an in-person hearing before the hearing examiner.

(4) If the obligor requests a hearing within the 10-day period:

(a) the delinquency income withholding by the department must be stayed until conclusion of the hearing or the date of the hearing if the obligor fails to appear at the scheduled hearing. If the obligor is only contesting an arrearage amount and is not contesting withholding for current support, income withholding for current support is not stayed.

(b) the department shall, within 45 days of the service of the notice of intent to withhold income, inform the obligor of the hearing results concerning whether income withholding will take place.

(5) The department shall issue an order to withhold income in accordance with 40-5-415 if:

(a) the obligor fails to file a written request for hearing with the department within the specified 10-day period;

(b) the obligor fails to appear at a scheduled hearing;

(c) the hearing officer determines from the evidence that the obligor owes unpaid support equal to or in excess of 1 month's support obligation and the amount of arrearages owing is determined and adjudged to be a fixed and certain sum; or

(d) in cases in which income withholding is being initiated at the request of an obligee without regard to whether there is an arrearage, the hearing examiner determines from the evidence that the obligor did not meet the terms of the alternative arrangement.

(6) For purposes of the hearing process, arrearages of support must be computed on the basis of the amount owed and unpaid on the date the obligor was served with the notice of intent to withhold income. When the department is enforcing a current support obligation, payment of the arrearage after service of the notice is not a basis for not initiating income withholding.

(7) In a case initiated because an arrearage has accrued or because additional income is being withheld to satisfy additional arrearages, the obligor, within 45 days of service of the notice of intent to withhold income, must be informed of the hearing decision on whether income withholding will take place.

(8) If the obligor fails to request a hearing within 10 days or fails to appear at a scheduled hearing or if the hearing examiner determines that the obligor owes a combination of unpaid support equal to or in excess of 1 month's support obligation, the department shall proceed with the intended action in accordance with 40-5-415.

History: **En. Sec. 7, Ch. 571, L. 1985; amd. Sec. 11, Ch. 702, L. 1989; amd. Sec. 10, Ch. 635, L. 1991.**

40-5-415. Order to withhold income — rules. (1) When the requirements of this part have been met, the department shall serve an order or modification order to withhold and deliver income upon any payor or combination of payors. The order must:

(a) direct the payor and successor payors to withhold from the obligor's income each month the amount specified in the order if sufficient funds are available;

(b) direct the payor to deliver the amount withheld to the department in the same month in which the funds were withheld;

(c) state that the order is binding on the payor until further notice by the department;

(d) state the rights and duties of the payor under this part; and

(e) include a statement that the obligor is required under a support order to provide health insurance coverage for the obligor's child, if appropriate.

(2) An order or modification order to withhold and deliver the obligor's income made under this section is binding upon the payor immediately upon service of the order upon the payor. Service of the order or modification order to withhold may be made either personally or by certified mail.

(3) Whenever there is more than one payor, the department may, in its discretion, apportion the total amount to be withheld each month among payors. Whenever an obligor's income is subject to withholding for more than one obligee, the department may consolidate the payments received each month and distribute the income among the obligees according to department rules.

History: En. Sec. 8, Ch. 571, L. 1985; amd. Sec. 12, Ch. 702, L. 1989; amd. Sec. 11, Ch. 635, L. 1991; amd. Sec. 20, Ch. 631, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 631 inserted second sentence of (3) regarding consolidation of payments and distribution according to Department rules.

Cross-References

Actual and constructive notice, 1-1-217.

40-5-416. Determination of amount of income to be withheld. (1) (a) Subject to the limitations provided in subsection (2), the amount of funds to be withheld each month from the obligor's income must be the amount of money necessary to pay current installments of support as they become due and payable.

(b) If income is being withheld to satisfy an arrearage, the amount of funds to be withheld must include the greater of:

(i) the amount of money that, when deducted in equal amounts each month, will pay all outstanding support arrearages and interest, if any, within 2 years; or

(ii) 25% of the obligor's income.

(c) If income is being withheld under this part, the department may allow a fee not to exceed $5 each month, which may be withheld by the payor as compensation for the administrative costs of each withholding.

(2) The maximum amounts withheld from the obligor's wages or salaries, including fees, may not exceed the maximum amount permitted under section 303(b) of the federal Consumer Credit Protection Act, 15 U.S.C. 1673(b), as amended.

(3) At any time, if the obligor can show that substantial hardship will result if the maximum permissible withholding is implemented or continued, the department for cause shown may in its discretion determine a lesser amount to be withheld each month in satisfaction of support arrearages.

History: En. Sec. 9, Ch. 571, L. 1985; amd. Sec. 13, Ch. 702, L. 1989; amd. Sec. 12, Ch. 635, L. 1991.

Cross-References

Earnings of judgment debtor — exemptions, 25-13-614.

40-5-417. Modification or termination of withholding orders. (1) The department may at any time modify the order to withhold income to:

(a) reflect payment in full of the arrearages by income withholding or otherwise;

(b) recognize an increase or decrease in the support order; or

(c) indicate any other reason the amount to be withheld is to be reduced or changed.

(2) If an arrearage occurs while the department is collecting an amount of money necessary to pay current installments of support as they become due and payable, the department may adjust the amount of income required to be withheld to also satisfy the arrearage, as provided in this part.

(3) An income withholding order terminates only when the department is no longer authorized under the law to collect support or, when appropriate, services rendered under 40-5-203 have come to an end or when the obligation to pay support is terminated and all arrearages are paid in full, whichever occurs first.

(4) The payment in full of any arrearage amount may not be the sole basis for termination of withholding as long as there is a support obligation enforceable by the department.

History: En. Sec. 14, Ch. 571, L. 1985; amd. Sec. 14, Ch. 702, L. 1989; amd. Sec. 13, Ch. 635, L. 1991.

Cross-References

Modification of child support, 40-4-219.

40-5-418. Payment records. (1) The department, in collecting, disbursing, or receiving payments pursuant to orders to withhold income, shall maintain complete, accurate, and clear records of all payments and disbursements.

(2) Certified payment records maintained by the department must, without further proof or foundation, be admitted into evidence in any legal proceedings under this part. Such records constitute prima facie evidence of the amount of support paid and arrearages that have accrued since the department began to monitor support payment in a case.

History: En. Sec. 15, Ch. 571, L. 1985.

Cross-References

Public records — presumption of correctness, 26-1-602.

Montana Rules of Evidence, Title 26, ch. 10.

Self-authentication, Rule 902, M.R.Ev. (see Title 26, ch. 10).

Public records, Rule 1005, M.R.Ev. (see Title 26, ch. 10).

40-5-419 and 40-5-420 reserved.

40-5-421. Duties of payor. (1) A payor who has been served with an order to withhold and deliver income shall deduct the amount designated in the order beginning not later than the first pay period that occurs after 14 days from the service of the order. The payor shall, within 10 working days of the date the obligor is paid, promptly deliver the amount withheld to the department as directed by the order or in accordance with any subsequent modification of the order received from the department. The payor shall include with the payment a statement indicating the date the amount was withheld from the obligor's income.

(2) Whenever the payor is obligated to withhold income for more than one obligor, the payor may combine all amounts withheld into a single payment for that month with the portion thereof which is attributable to each obligor separately designated.

(3) Whenever there is more than one order for withholding against a single obligor, the payor must comply with the orders in the sequence in which they were served upon the payor and must honor all withholding orders to the extent that the total amount withheld from the obligor's wages or salary does not exceed the limits set in 40-5-416.

(4) The payor must promptly notify the department of the termination of the obligor's employment or other source of income and provide the obligor's last-known address and the name and address of the obligor's new employer or other source of income, if known to the payor.

History: En. Sec. 10, Ch. 571, L. 1985; amd. Sec. 14, Ch. 635, L. 1991.

40-5-422. Obligor rights protected — penalties. (1) An employer may not discharge, discipline, or refuse to hire an obligor:

(a) because the person has a child support obligation; or

(b) because of the institution of income withholding on the obligor's income or the initiation of proceedings under this part.

(2) Any person who violates this section may be fined not more than $500 and not less than $150 and may be required to make full restitution to the aggrieved obligor, including reinstatement and backpay.

History: En. Sec. 12, Ch. 571, L. 1985; amd. Sec. 18, Ch. 702, L. 1989.

Cross-References

Discharge or layoff of employee because of attachment or garnishment prohibited, 39-2-302.

40-5-423. Priority of income withholding. An order to withhold and deliver income under this part takes priority over any:

(1) wage or income deduction order under any other state law;

(2) voluntary or involuntary assignment of wages;

(3) other voluntary deductions from the obligor's income;

(4) levies, writs of execution, or garnishments of the obligor's income; and

(5) any other claims by creditors.

History: En. Sec. 13, Ch. 571, L. 1985.

Cross-References

What property subject to attachment, 27-18-102.

40-5-424. Civil liability for failure to comply with income withholding order. (1) A payor who fails to withhold and deliver support money from the obligor's income when ordered to do so under 40-5-415 is liable to the department for any amount up to the accumulated amount the payor should have withheld and delivered.

(2) No payor who complies with an order to withhold under this part is liable for wrongful withholding to the obligor or to any other person claiming rights derived from the obligor.

History: En. Sec. 11, Ch. 571, L. 1985.

Cross-References

Damages — measure of damages, Title 27, ch. 1, parts 2 and 3.

40-5-425. Repealed. Sec. 22, Ch. 635, L. 1991.

History: En. Sec. 5, Ch. 702, L. 1989.

40-5-426 through 40-5-430 reserved.

40-5-431. Registration of interstate income withholding orders. (1) Whenever an obligor, whether or not the obligor resides in this state, derives income within this state and an order for income withholding of the obligor's income has been issued by a public agency of another state as a means to enforce support orders under Title IV-D of the Social Security Act, that agency may register the income withholding order with the department. Upon registration of the foreign withholding order, it must be treated in the same manner and have the same effect as an income withholding order issued by the department. The provisions of 40-5-188 through 40-5-191 apply to this section to the extent that they are consistent with this section.

(2) The application for registration of a foreign order for income withholding must include:

(a) a certified copy of the support order, with all modifications of the order;

(b) a certified copy of the income withholding order;

(c) a sworn statement of the facts entitling the agency to issue an income withholding order, including a statement of the amount of arrearages and a statement that all procedural due process requirements of the foreign jurisdiction for issuance of the income withholding order have been carried out in full;

(d) the name, address, and social security number of the obligor;

(e) the name and address of the obligor's employer or of any other payor of income to the obligor if the order for income withholding of the foreign jurisdiction extends to other income; and

(f) the name and address of the agency or person to whom support payments collected by the department under income withholding procedures should be transmitted.

(3) When the foreign income withholding order is registered, the department shall serve the order upon the payor, with directions to the payor to comply with the order and to deliver the withheld amounts to the department. Registration of a foreign income-withholding order under this section does not confer jurisdiction for any other purpose, such as modification of the support order, custody, or visitation.

History: En. Sec. 16, Ch. 571, L. 1985; amd. Sec. 51, Ch. 328, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 328 in (1) inserted last sentence that read: "The provisions of 40-5-188 through 40-5-191 apply to this section to the extent that they are consistent with this section"; in (3) inserted last sentence providing that registration of a foreign income-withholding order does not confer jurisdiction for any other purpose; and made minor changes in style.

Cross-References

Uniform Reciprocal Enforcement of Support Act, Title 40, ch. 5, part 1.

40-5-432. Application for interstate withholding. (1) Whenever an obligor resides in this state and derives income within this state and a support order issued in another jurisdiction is being enforced by a public agency of that jurisdiction pursuant to Title IV-D of the Social Security Act, that agency may apply to the department for income withholding services.

(2) The application for interstate income withholding must include:

(a) a certified copy of the support order, with all modification thereof;

(b) an affidavit by the obligee containing a statement that the obligor is delinquent in the payment of support in an amount equal to at least 1 month's support payment and a computation of the period and total amount of the arrearage as of the date of the application;

(c) a certified copy of the payment record if such records are maintained by the agency or any other agency within that jurisdiction;

(d) the name, address, and social security number of the obligor;

(e) the name and address of all known payors within this state; and

(f) the name and address of the agency or person to whom support payments collected by the department under income withholding procedures should be sent.

(3) Upon receipt of the application, the department shall commence procedures to establish orders for income withholding, including notice and opportunity for hearing under this part. The department shall further advise the obligor that the income withholding was requested on the basis of an application from another jurisdiction.

(4) In any hearing based on an application under this section, the certified copy of the support order and affidavit, without further proof or foundation, constitutes prima facie evidence that the support order is valid and that the obligee or public agency is entitled to an order of income withholding and that the amount of current support payments and arrearages are as stated.

(5) In accordance with 40-5-414, a final decision on whether or not income withholding is appropriate must be rendered within 45 days of service of notice on the obligor. If, however, because of the interstate aspects of the case, the hearing examiner is unable to resolve a dispute over the amount of arrearages within such time and the hearing examiner has found that the obligor is delinquent in an amount equal to at least 1 month's support payment, the hearing examiner shall authorize immediate service of the order for withholding as to current support and may continue the hearing on the disputed amounts beyond the 45-day limit.

History: En. Sec. 17, Ch. 571, L. 1985.

40-5-433. Additional duties of department in interstate income withholding. (1) If the department determines that the obligor is no longer employed in this state or no longer derives income within this state, the department shall promptly notify the agency which requested income withholding of the changes and shall forward to that agency all information it has with respect to the obligor's new address and the name and address of the obligor's new employer or other source of income.

(2) The department shall promptly transmit payments received on an income withholding order to the agency or person designated in the interstate application.

History: En. Sec. 18, Ch. 571, L. 1985; amd. Sec. 15, Ch. 635, L. 1991.

40-5-434. Initiation of income withholding in other jurisdictions. Whenever the department is authorized or required under the laws of this state to enforce and collect on a support order and the obligor is employed or has a source of income in another state, the department shall request the agency responsible for income withholding in that state to implement income withholding procedures. The department shall compile and transmit to the withholding agency of the other state all documentation required by the law of that state necessary for the purpose of obtaining an income withholding order in that state. The department shall also transmit to the withholding agency a certified copy of any subsequent modification of the support order.

History: **En. Sec. 19, Ch. 571, L. 1985.**

40-5-435 through 40-5-439 reserved.

40-5-440. Health insurance coverage — order of enrollment. (1) Whenever the obligor is required by a court or administrative order or is required under 40-5-208(1)(b) to provide health insurance coverage for a child and the obligor fails to provide the coverage or lets it lapse, the department may enforce the obligation under this section if a payor of income to an obligor has a health insurance plan that can be extended to cover the obligor's child.

(2) (a) Prior to service of an initial order of enrollment on a payor, the department shall serve the obligor a notice of its intent to order an enrollment, by certified mail or by personal service.

(b) Within 20 days after service of the notice, the obligor may provide written proof to the department that health insurance coverage for the child has been obtained or applied for. If proof is received by the department within 20 days after service, further action may not be taken by the department except in the event of a lapse of coverage as provided in subsection (3). If proof of health insurance coverage is not timely received by the department, an order of enrollment may be issued in accordance with subsection (3).

(3) If the obligor fails to timely provide proof of coverage or if after timely proof of coverage the obligor lets the coverage lapse, the department may, without further notice to the obligor, serve an order of enrollment on the payor. The payor may be the same payor who is subject to an order to withhold under this part or any other payor or subsequent payor.

(4) (a) Upon receipt of an order of enrollment, the payor shall respond to the department within 20 days and confirm that the child:

(i) has been enrolled in the health insurance plan;

(ii) will be enrolled in the next enrollment period; or

(iii) cannot be covered because the child resides outside the plan's service area or the contracted terms of the plan do not permit an extension of coverage to the child.

(b) Upon enrollment of the child, the payor shall withhold from the obligor's income an amount equal to the required premium, if any, and apply the withheld amount to the premium as necessary.

(c) If more than one plan is offered by the payor and each plan may be extended to the child, the child must be enrolled in the same plan as the obligor. If the obligor's plan does not provide coverage that is accessible to the child, the child must be enrolled in the least expensive plan available to the obligor.

(d) Once an initial order of enrollment is authorized under this section, the authority to issue orders to subsequent payors and to bind payors to the orders terminates only when:

(i) the department is no longer providing enforcement services;

(ii) the obligation to provide health insurance coverage is terminated according to law; or

(iii) the department finds under subsection (5) that the premium charged to the obligor is not reasonable under the circumstances of the obligor's case.

(e) A payor served with an order of enrollment shall inform the department of the name of the health insurance coverage provider or insurer and the extent of the coverage. The payor shall make available to the department or obligee any necessary claim forms or enrollment membership cards. If coverage is terminated for any reason, the payor shall inform the department of the termination within 20 days of the termination date.

(5) (a) Whenever an obligor is being charged with a premium under subsection (4) and the obligor believes the amount of the premium to be unreasonable under the circumstances, the obligor may make a written request to the department for an administrative hearing to determine the reasonableness of the premium charge.

(b) The department shall schedule the hearing within 20 days after receipt of the obligor's request. The hearing must be conducted by telephone conferencing methods unless the hearing officer determines an in-person hearing is appropriate.

(c) If the hearing officer finds that the premium charged the obligor is causing an undue hardship on the obligor or the child, the department shall withdraw any order of enrollment served on a payor. A withdrawal is temporary and remains in effect only until a significant change in circumstances occurs, such as an improvement in the obligor's ability to pay the premium or an increase in the child's need for health insurance coverage. Upon a change of circumstances, the department may again serve the order of enrollment on the payor. After service of the order, the obligor may request an administrative hearing to determine the reasonableness of premiums considering the new circumstances.

(d) If the hearing officer finds that the premium is reasonable under the circumstances, the obligor may not request any further hearings under this subsection (5) unless there is a significant change in circumstances from that existing at the time the finding was made.

(6) A notice under this section may be combined with a notice of intent to withhold income under 40-5-413 or with any other notice served on an obligor under part 2 of this chapter.

(7) This section may not be construed to limit the right of an obligee or the department to bring any other action available under the law to enforce an obligation to provide health insurance coverage for a child.

(8) This section may not be construed to require a health maintenance organization, health care service provider, or insurer to extend coverage to a child who resides outside its service area or to deviate from contractual provisions and restrictions.

(9) An obligor whose child is enrolled in a health insurance plan under this section shall cooperate with the insurer, health care service provider, department, and child's custodian to obtain and use the health insurance plan.

History: En. Sec. 18, Ch. 635, L. 1991.

40-5-441. Liability of payor — penalties. (1) A payor is liable for a fine of up to $1,000 for each instance in which the payor fails or refuses, within 20 days of receipt of an order of enrollment, to:

(a) enroll the obligor's child in the health insurance plan; or

(b) make a written response to the department, stating that the child:

(i) will be enrolled in the next available open enrollment period; or

(ii) cannot be covered and explaining the reasons why coverage cannot be provided.

(2) A payor who enrolls a child in a health insurance plan in compliance with an order of enrollment under 40-5-440 is exempt from any liability to the obligor that may result from the enrollment.

History: En. Sec. 19, Ch. 635, L. 1991.

40-5-442. Health insurance coverage — notice of intent to purchase. (1) The department may serve a notice of intent to purchase health insurance coverage on an obligor by certified mail or personal service, when:

(a) the obligor is ordered by a court or administrative order or is required under 40-5-208(1)(b) to provide health insurance coverage for a child;

(b) the obligor fails to provide such coverage or lets it lapse;

(c) there is no payor upon whom an order of enrollment under 40-5-440 is applicable; and

(d) the child is currently eligible for medical assistance benefits under Title 53.

(2) The notice must specify the type and cost of the proposed health insurance coverage. Within 20 days of the date of service of the notice, the obligor shall:

(a) provide written proof to the department that the obligor has either applied for or obtained coverage accessible to the child; or

(b) request an administrative hearing to show that the proposed purchase of coverage and the premium chargeable to the obligor will cause undue hardship.

(3) If a hearing is requested, the department shall schedule the hearing within 20 days of the receipt of the request. The hearing must be held by telephone conferencing methods unless the hearing officer determines that an in-person hearing is appropriate.

(4) If the obligor fails to timely provide written proof of coverage or if the hearing officer finds that the proposed purchase of coverage will not cause an undue hardship on the obligor, the department shall purchase the health insurance coverage specified in the notice. The amount of the premium may be added to the obligor's child support debt and may be collected without further notice by income withholding under this part or by any other remedy available to the department.

(5) Health insurance coverage purchased under this section must be continued by the department until:

(a) the child is no longer eligible for medical assistance benefits;

(b) the obligor is no longer responsible under the law for providing coverage for the child;

(c) the obligor provides written proof to the department that other coverage accessible to the child has been obtained; or

(d) relief is granted under subsection (6).

(6) (a) If a change of circumstances occurs after health insurance coverage is purchased and the obligor believes the change makes the provision of health insurance coverage an undue hardship, the obligor may make a

written request for an administrative hearing to reconsider the matter of continuing to purchase coverage.

(b) If a hearing is requested, the department shall schedule the hearing within 20 days of the receipt of the request. The hearing must be conducted by telephone conferencing methods unless the hearing officer determines that an in-person hearing is appropriate.

(c) If the hearing officer finds that the continued purchase of coverage will cause undue hardship on the obligor, the department shall terminate the coverage.

(d) If the hearing officer finds that the continued purchase of coverage will not cause undue hardship, the department shall continue to purchase the coverage, as appropriate, under the provisions of subsection (5).

(7) An obligor whose child is enrolled in a health insurance plan under this section shall cooperate with the insurer, health care provider, department, and child's custodian to obtain and use the health insurance plan.

History: En. Sec. 20, Ch. 635, L. 1991.

40-5-443. Payors to provide information — exemption from liability. (1) For the purposes of this part, upon written request by the department, a payor or former payor and any labor union of which the obligor is or may have been a member shall provide the department with the following information, if known, regarding the obligor:

(a) last-known residential address;

(b) social security number;

(c) dates of employment or union membership;

(d) amounts of wages, salaries, commissions, and other earnings paid to the obligor during any period when the department provided support enforcement services; and

(e) whether health insurance coverage is or was available to the obligor through the payor or union and, if so:

(i) the name of the insurer or health care provider;

(ii) the policy numbers or other identifiers; and

(iii) the persons covered.

(2) A payor who discloses information to the department in compliance with this section is exempt from any liability to the obligor that may result from such disclosure.

History: En. Sec. 21, Ch. 635, L. 1991.

Part 5 reserved

Part 6

Civil Contempt for Nonsupport

40-5-601. Failure to pay support — civil contempt. (1) For purposes of this section, "support" means child support; spousal support; health insurance, medical, dental, and optical payments; day care expenses; and any other payments due as support under a court or administrative order. Submission of health insurance claims is a support obligation if health insurance coverage is ordered.

(2) If a person obligated to provide support fails to pay as ordered, the payee or assignee of the payee of the support order may petition a district court to find the obligated person in contempt.

(3) The petition may be filed in the district court:

(a) that issued the support order;

(b) of the judicial district in which the obligated person resides; or

(c) of the judicial district in which the payee or assignee of the payee resides or has an office.

(4) Upon filing of a verified petition alleging facts constituting contempt of the support order, the district court shall issue an order requiring the obligated person to appear and show cause why the obligated person should not be held in contempt and punished under this section.

(5) The obligated person is presumed to be in contempt upon a showing that:

(a) there is a support order issued by a court or administrative agency of this or another state with jurisdiction to enter the order;

(b) the obligated person had actual or constructive knowledge of the order; and

(c) the obligated person failed to pay support as ordered.

(6) Certified payment records maintained by a clerk of court or administrative agency authorized by law or by the support order to collect support are admissible in a proceeding under this section and are prima facie evidence of the amount of support paid and any arrearages under the support order.

(7) Following a showing under subsection (5), the obligated person may move to be excused from the contempt by showing clear and convincing evidence that the obligated person:

(a) has insufficient income to pay the arrearages;

(b) lacks personal or real property that can be sold, mortgaged, or pledged to raise the needed sum;

(c) has unsuccessfully attempted to borrow the sum from a financial institution;

(d) has no other source, including relatives, from which the sum can be borrowed or secured;

(e) does not have a valid out-of-court agreement with the payee waiving, deferring, or otherwise compromising the support obligation; or

(f) cannot, for some other reason, reasonably comply with the order.

(8) In addition to the requirement of subsection (7), the obligated person shall also show by clear and convincing evidence that factors constituting the excuse were not occasioned or caused by the obligated person voluntarily:

(a) remaining unemployed or underemployed when there is employment suitable to the obligated person's skills and abilities available within a reasonable distance from the obligated person's residence;

(b) selling, transferring, or encumbering real or personal property for fictitious or inadequate consideration within 6 months prior to a failure to pay support when due;

(c) selling or transferring real property without delivery of possession within 6 months prior to a failure to pay support when due or, if the sale or transfer includes a reservation of a trust for the use of the obligated person, purchasing real or personal property in the name of another person or entity;

(d) continuing to engage in an unprofitable business or contract unless the obligated person cannot reasonably be removed from the unprofitable situation; or

(e) incurring debts subsequent to entry of the support order that impair the obligated person's ability to pay support.

(9) If the obligated person is not excused under subsections (7) and (8), the district court shall find the obligated person in contempt of the support order. For each failure to pay support under the order, the district court shall order punishment as follows:

(a) not more than 5 days incarceration in the county jail;

(b) not more than 120 hours of community service work;

(c) not more than a $500 fine; or

(d) any combination of the penalties in subsections (9)(a) through (9)(c).

(10) An order under subsection (9) must include a provision allowing the obligated person to purge the contempt. The obligated person may purge the contempt by complying with an order requiring the obligated person to:

(a) seek employment and periodically report to the district court all efforts to find employment;

(b) meet a repayment schedule;

(c) compensate the payee for the payee's attorney fees, costs, and expenses for a proceeding under this section;

(d) sell or transfer real or personal property or transfer real or personal property to the payee, even if the property is exempt from execution;

(e) borrow the arrearage amount or report to the district court all efforts to borrow the sum;

(f) meet any combination of the conditions in subsections (10)(a) through (10)(e); or

(g) meet any other conditions that the district court in its discretion finds reasonable.

(11) If the obligated person fails to comply with conditions for purging contempt, the district court shall immediately find the obligated person in contempt under this section and impose punishment.

(12) A proceeding under this section must be brought within 3 years of the date of the last failure to comply with the support order.

History: En. Sec. 1, Ch. 523, L. 1993.

Part 7

Suspension of Licenses for Nonsupport

Part Compiler's Comments

Coordination Instruction: Section 13, Ch. 523, L. 1993, was a coordination instruction that provided: "If both Senate Bill No. 217 and [this act], containing [sections 3 through 11], are passed and approved, Senate Bill No. 217 [Ch. 348, L. 1993] is void." Pursuant to this provision, Ch. 348, L. 1993, is void.

40-5-701. Definitions. As used in this part, the following definitions apply:

(1) (a) "Child" means:

(i) a person under 18 years of age who is not emancipated, self-supporting, married, or a member of the armed forces of the United States;

(ii) a person under 19 years of age who is still in high school;

(iii) a person who is mentally or physically incapacitated when the incapacity began prior to that person reaching 18 years of age; and

(iv) in IV-D cases, a person for whom:

(A) support rights are assigned under 53-2-613;

(B) a public assistance payment has been made;

(C) the department is providing support enforcement services under 40-5-203; or

(D) the department has received a referral for interstate services from an agency of another state under the provisions of the Uniform Reciprocal Enforcement of Support Act or under Title IV-D of the Social Security Act.

(b) The term may not be construed to limit the ability of the department to enforce a support order according to its terms when the order provides for support extending beyond the time the child reaches 18 years of age.

(2) "Delinquency" means a support debt or support obligation due under a support order in an amount greater than or equal to 6 months' support payments as of the date of service of a notice of intent to suspend a license.

(3) "Department" means the department of social and rehabilitation services.

(4) "IV-D case" means a case in which the department is providing support enforcement services as a result of:

(a) an assignment of support rights under 53-2-613;

(b) a payment of public assistance;

(c) an application for support enforcement services under 40-5-203; or

(d) a referral for interstate services from an agency of another state under the provisions of the Uniform Reciprocal Enforcement of Support Act or under Title IV-D of the Social Security Act.

(5) "License" means a license, certificate, registration, or authorization issued by an agency of the state of Montana granting a person a right or privilege to engage in a business, occupation, or profession or any other privilege that is subject to suspension, revocation, forfeiture, or termination by the licensing authority prior to its date of expiration.

(6) "Licensing authority" means any department, division, board, agency, or instrumentality of this state that issues a license.

(7) "Obligee" means:

(a) a person to whom a support debt or support obligation is owed; or

(b) a public agency of this or another state that has the right to receive current or accrued support payments or that is providing support enforcement services under this chapter.

(8) "Obligor" means a person who owes a duty of support.

(9) "Order suspending a license" means an order issued by a support enforcement entity to suspend a license. The order must contain the name of the obligor, the type of license, and, if known, the social security number of the obligor.

(10) "Payment plan" includes but is not limited to a plan approved by the support enforcement entity that provides sufficient security to ensure com-

pliance with a support order and that incorporates voluntary or involuntary income withholding under part 3 or 4 of this chapter or a similar plan for periodic payment of a support debt and, if applicable, current and future support.

(11) "Support debt" or "support obligation" means the amount created by:

(a) the failure to provide support to a child under the laws of this or any other state or a support order; or

(b) a support order for spousal maintenance if the judgment or order requiring payment of maintenance also contains a judgment or order requiring payment of child support for a child for whom the person awarded maintenance is the custodial parent.

(12) "Support enforcement entity" means:

(a) in IV-D cases, the department; or

(b) in all other cases, the district court that entered the support order or a district court in which the support order is registered.

(13) "Support order" means an order that provides a determinable amount for temporary or final periodic payment of a support debt or support obligation and that may include payment of a determinable or indeterminable amount for insurance covering the child issued by:

(a) a district court of this state;

(b) a court of appropriate jurisdiction of another state, an Indian tribe, or a foreign country;

(c) an administrative agency pursuant to proceedings under Title 40, chapter 5, part 2; or

(d) an administrative agency of another state with a hearing function and process similar to those of the department.

History: En. Sec. 3, Ch. 523, L. 1993.

40-5-702. Notice of intent to suspend license. (1) Upon the petition of an obligee alleging the existence of a delinquency, a support enforcement entity may issue a notice of intent to suspend a license.

(2) The notice must be served upon the obligor personally or by certified mail and may:

(a) in a IV-D case, be incorporated into any notice served under Title 17, chapter 4, part 1, or Title 40, chapter 5, part 2 or 4;

(b) in all other cases, be combined with any other enforcement proceeding.

(3) The notice must state that the obligor's license will be suspended 60 days after service unless within that time the obligor:

(a) pays the entire support debt stated in the notice;

(b) enters into a payment plan approved by the support enforcement entity; or

(c) appears and shows cause in a hearing before the support enforcement entity under 40-5-703 that suspension of a license is not appropriate.

(4) In a IV-D case, the notice must advise the obligor that hearings conducted under 40-5-703 are subject to the contested case provisions of the Montana Administrative Procedure Act.

History: En. Sec. 4, Ch. 523, L. 1993.

40-5-703. Hearing — order suspending license. (1) To show cause why suspension of a license would not be appropriate, the obligor shall request a hearing from the support enforcement entity that issued the notice of intent to suspend the license. The request must be made within 60 days of the date of service of the notice.

(2) Upon receipt of a request for hearing from an obligor, the support enforcement entity shall schedule a hearing for the purpose of determining if suspension of the obligor's license is appropriate. The support enforcement entity shall stay suspension of the license pending the outcome of the hearing.

(3) The only issues that may be determined in a hearing under this section are the amount of the support debt or support obligation, if any, whether or not a delinquency exists, and whether or not the obligor has entered into a payment plan.

(4) If an obligor fails to respond to a notice of intent to suspend a license, fails to timely request a hearing, or fails to appear at a regularly scheduled hearing, the obligor's defenses, objections, or request for a payment plan must be considered to be without merit and the support enforcement entity shall enter a final decision and order accordingly.

(5) If the support enforcement entity determines that the obligor owes a delinquency and that the obligor has not entered into a payment plan, the support enforcement entity shall issue an order suspending the obligor's license and ordering the obligor to refrain from engaging in the licensed activity. The support enforcement entity shall send a copy of the order suspending a license to the licensing authority and the obligor.

(6) The determinations of the department under this section are a final agency decision and are subject to judicial review under 40-5-253 and the Montana Administrative Procedure Act.

(7) A determination made by the support enforcement entity under this part is independent of any proceeding of the licensing authority to suspend, revoke, deny, terminate, or renew a license.

History: En. Sec. 5, Ch. 523, L. 1993.

40-5-704. Suspension, denial, and nonrenewal of licenses. (1) Upon receipt of an order suspending a license, a licensing authority shall implement the suspension of the license by:

(a) determining if it has issued a license to the obligor whose name appears on the order;

(b) entering the suspension on the appropriate records;

(c) reporting the suspension as appropriate; and

(d) if required by law, demanding surrender of the suspended license.

(2) An order issued by a support enforcement entity under 40-5-703 suspending a license must be processed by the licensing authority without an additional review or hearing involving the licensing authority concerning suspension of the license.

(3) Notwithstanding the provisions of any other law setting terms of suspension, revocation, denial, termination, or renewal of a license, an order issued by a support enforcement entity suspending a license must be implemented by the licensing authority and continues until the support enforcement entity advises the licensing authority that the suspension has been stayed or terminated.

(4) In the event that a license is suspended, any funds paid by the obligor to the licensing authority for costs related to issuance, renewal, or maintenance of a license may not be refunded to the obligor.

(5) Unless an order staying suspension of a license is in effect, an obligor who continues to engage in the business, occupation, profession, or other licensed activity while the license is suspended under this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $250 or more than $500 or by imprisonment in the county jail for a term not to exceed 6 months, or both. Upon conviction of a second or subsequent violation, the obligor shall be punished by a fine of not less than $500 or more than $2,000 or by imprisonment in the county jail for a term not to exceed 1 year, or both. The support enforcement entity or the licensing authority may elect the remedy under this section or any other remedy provided for engaging in a licensed activity without a license or while the license is suspended.

(6) The licensing authority is exempt from liability to the licensee for activities conducted in compliance with this part.

(7) The licensing authority has no jurisdiction to modify, remand, reverse, vacate, or stay the order of the support enforcement entity suspending a license.

(8) To the extent that inconsistencies exist between this part and the procedural requirements for suspension of a license issued by the department of health and environmental sciences, this part supersedes those requirements.

History: En. Sec. 6, Ch. 523, L. 1993.

40-5-705 through 40-5-708 reserved.

40-5-709. Nondisciplinary suspension for failure to pay child support. Notwithstanding any other provision of this title, the department has the authority to suspend a license under this part without any action by the licensing authority. The licensing authority shall, upon receipt of an order issued by the support enforcement entity, suspend the license of the named individual. The suspension must be nondisciplinary for professional or occupational licenses, and the provisions of 2-4-631 do not apply.

History: En. Sec. 7, Ch. 523, L. 1993.

40-5-710. Stay of suspension of license — payment plan — hardship. (1) An obligor may at the time of the hearing conducted under 40-5-703 or at any time after the hearing petition the support enforcement entity for an order staying suspension of the license.

(2) The support enforcement entity shall consider the obligor's petition for a stay separately from any determination on whether suspension of a license is appropriate.

(3) The support enforcement entity may stay suspension of a license upon a showing that suspension or continued suspension of a license would create a significant hardship to the obligor, to the obligor's employees, to legal dependents residing in the obligor's household, or to persons, businesses, or other entities served by the obligor.

(4) A stay terminates upon:

(a) termination of the circumstances upon which a hardship is based;

(b) failure by the obligor to abide by the terms and conditions of a payment plan; or

(c) the date of termination, if any, provided in the order staying suspension of the license.

(5) If the licensing authority has been notified of an order suspending a license, the support enforcement entity shall send a copy of any order staying or reinstating suspension of the license to the licensing authority and the obligor.

(6) (a) Upon receipt of an order staying or reinstating suspension of the license, the licensing authority shall:

(i) enter the information on appropriate records;

(ii) report the action as appropriate; and

(iii) demand surrender of the suspended license or return the reinstated license.

(b) Further action by the licensing authority is not necessary to implement the stay or reinstatement of suspension of the license.

History: En. Sec. 8, Ch. 523, L. 1993.

40-5-711. Termination of order to suspend license. (1) When the support enforcement entity determines that the support debt or support obligation is paid in full, it shall terminate the order suspending the license. The support enforcement entity shall send a copy of the order terminating the suspension of the license to the licensing authority and the obligor.

(2) Entry of an order terminating suspension of a license does not limit the ability of a support enforcement entity to issue a new order suspending the license of the same obligor in the event of another delinquency.

History: En. Sec. 9, Ch. 523, L. 1993.

40-5-712. Fees. A licensing authority subject to this part may charge the obligor a fee to cover the administrative costs incurred by the licensing authority under this part. Fees collected pursuant to this section by a licensing authority with a state special revenue fund must be deposited in the state special revenue fund for the use of the licensing authority to pay the costs of administering this part.

History: En. Sec. 10, Ch. 523, L. 1993.

40-5-713. Rulemaking authority. The department shall adopt rules necessary for the implementation and administration of this part. The licensing authority shall adopt rules necessary for the implementation and administration of this part.

History: En. Sec. 11, Ch. 523, L. 1993.

CHAPTER 6

PARENT AND CHILD

Part 1 — Uniform Parentage Act

40-6-101. Short title.
40-6-102. Parent and child relationship defined.
40-6-103. Relationship not dependent on marriage.
40-6-104. How parent and child relationship established.
40-6-105. Presumption of paternity.
40-6-106. Artificial insemination.
40-6-107. Determination of father and child relationship — who may bring action.
40-6-108. Statute of limitations.
40-6-109. Jurisdiction — venue.
40-6-110. Parties.
40-6-111. Pretrial proceedings.
40-6-112. Blood tests.
40-6-113. Evidence relating to paternity.
40-6-114. Pretrial recommendations.
40-6-115. Civil action.
40-6-116. Judgment or order.
40-6-117. Enforcement of judgment or order.
40-6-118. Modification of judgment or order.
40-6-119. Rights to counsel — free transcript on appeal.
40-6-120. Hearings and records — confidentiality.
40-6-121. Action to declare mother and child relationship.
40-6-122. Promise to render support.
40-6-123. Birth records.
40-6-124. Repealed.
40-6-125. Children born out of wedlock — relinquishment — consent.
40-6-126. Notice of intent to claim paternity.
40-6-127. Expected child — intent to release or consent — petition and notice.
40-6-128. Proceeding to determine father's identity and terminate rights.
40-6-129. Grounds for termination of father's rights.
40-6-130. Best interests of the child — custody to father — legitimation.
40-6-131. Uniformity of application and construction.
40-6-132. Repealed.
40-6-133. Repealed.
40-6-134. Repealed.
40-6-135. Relinquishment of parental rights — form, execution, and revocation.

Part 2 — Obligations of Parents

40-6-201. Legitimacy of children born in wedlock.
40-6-202. Legitimacy of children born after dissolution of marriage.
40-6-203. Child legitimatized by marriage of parents.
40-6-204 through 40-6-210 reserved.
40-6-211. Obligations of parents for the support and education of their children.
40-6-212. Allowance to parent.
40-6-213. Remedy when parent dies without providing for support of child.
40-6-214. Reciprocal duties of parents and children in maintaining each other.
40-6-215. When parent liable for necessaries supplied to child.
40-6-216. When parent not liable for support furnished child.
40-6-217. Married person not bound for support of spouse's children by former marriage.
40-6-218. Compensation and support of person after attaining majority.
40-6-219 and 40-6-220 reserved.
40-6-221. Custody, services, and earnings of child.
40-6-222. Custody of children where husband and wife living separate.
40-6-223. When parent may bring action for the exclusive control of children — decree.

40-6-224. When custody may be awarded without dissolution proceedings.
40-6-225 through 40-6-230 reserved.
40-6-231. Right of parent to determine the residence of child.
40-6-232. Parental control over property of child.
40-6-233. Remedy for parental abuse.
40-6-234. When parental authority ceases.
40-6-235. Parent may relinquish services and custody of child.
40-6-236. Wages of minors.
40-6-237. Destruction of property by minor — liability of parents.
40-6-238. Limitation on amount of recovery.

Part 3 — Obligations of Children

40-6-301. Duty of child to support indigent parents.
40-6-302. Failure to support — misdemeanor.
40-6-303. Civil action to enforce duty to support.

Chapter Cross-References

Tax provisions relating to families, 7-6-4405, 7-6-4408, 7-16-4105, 15-6-201 through 15-6-208, 15-7-307, 15-30-112, 15-30-113, 15-30-134.

Person's residence presumed to be that of his family for voting purposes, 13-1-112.

Beneficiaries under PERS, 19-2-801, 19-2-802.

Civil procedure provisions relating to family matters, 25-9-102, 27-19-306, 70-19-102, 70-27-111.

Execution of judgments when family property and interest involved, Title 25, ch. 13.

Montana Rules of Civil Procedure relating to marriage, children, and family, Rules 4D(2)(b), 4D(2)(c), 4D(5)(a)(iii), 20(a), 27(a)(2), M.R.Civ.P. (see Title 25, ch. 20).

Evidence rules relating to marriage, children, and family, 26-1-601, 26-1-602, 26-1-802.

Parent or guardian may sue for injury or death of child or ward, 27-1-323, 27-1-512, 27-1-513.

When action not abated by death or other disability, 27-1-501, 27-1-511, 27-1-512.

U.C.C. provisions relating to families, 30-2-318, 30-9-109, 30-9-307.

Payment of unemployment compensation, 39-51-102, 39-51-201 through 39-51-206, 39-51-601, 39-51-2103, 39-51-2105, 39-51-2106, 39-51-2201, 39-51-2204, 39-51-2205, 39-51-2301 through 39-51-2307.

Workers' compensation law relating to families, Title 39, ch. 71, part 1; 39-71-602, 39-71-723, 39-71-737, 39-71-741, 39-71-742, 39-71-2203.

Rights of children, Title 41, ch. 1.

Child labor, Title 41, ch. 2.

General criminal provisions relating to family, 45-1-205, 45-2-101, 45-2-211.

Justifiable use of force with respect to children, 45-3-107.

Offenses against the person of a family member, 45-5-304, 45-5-507, 45-5-511, 45-5-602 through 45-5-604, 45-5-611, 45-5-612, 45-5-621 through 45-5-624, 50-20-104, 50-20-106 through 50-20-108.

Offenses against public order by family members, 45-8-113, 45-8-344.

Criminal procedure provisions relating to family members, 46-16-212, 46-23-1022, 46-23-1102.

Diagnostic tests for pregnant women and newborn infants, Title 50, ch. 19.

Day-care facilities, Title 52, ch. 2, part 7.

Payments for care of persons at institutions, Title 53, ch. 1, part 4.

General welfare provisions relating to family, 53-2-101, 53-2-201, 53-2-206, 53-2-610, 53-2-611; Title 53, ch. 3.

Aid to Families With Dependent Children, Title 53, ch. 4, part 2.

Automobile registration may be transferred to surviving heir without letters of administration, 61-3-201.

Child safety restraint systems, 61-9-420.

Distribution of estate property, Title 72.

Uniform Transfers to Minors Act, Title 72, ch. 26.

Housing Law of 1975, Title 90, ch. 6.

Cross-References

Remedy for parental abuse, 40-6-233.

When parental authority ceases, 40-6-234.

Jurisdiction and venue, 41-3-103.

Responsibility of providing protective services, 41-3-302.

Priority of Youth Court hearings, 41-5-110.

Endangering the welfare of children, 45-5-622.

Department to accept custody of children committed by courts, 53-4-115.

Guardians of minors, Title 72, ch. 5, part 2.

Part 1

Uniform Parentage Act

40-6-101. Short title. This part may be cited as the "Uniform Parentage Act".

History: En. 61-301 by Sec. 1, Ch. 512, L. 1975; R.C.M. 1947, 61-301.

40-6-102. Parent and child relationship defined. As used in this part, "parent and child relationship" means the legal relationship existing between a child and his natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.

History: En. 61-302 by Sec. 2, Ch. 512, L. 1975; R.C.M. 1947, 61-302.

Cross-References

Effect of final decree of adoption, 40-8-125.

40-6-103. Relationship not dependent on marriage. The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.

History: En. 61-303 by Sec. 3, Ch. 512, L. 1975; R.C.M. 1947, 61-303.

40-6-104. How parent and child relationship established. The parent and child relationship between a child and:

(1) the natural mother may be established by proof of her having given birth to the child or under this part;

(2) the natural father may be established under this part;

(3) an adoptive parent may be established by proof of adoption.

History: En. 61-304 by Sec. 4, Ch. 512, L. 1975; R.C.M. 1947, 61-304.

Cross-References

Effect of final decree of adoption, 40-8-125.

Certificate of adoption, 50-15-303.

40-6-105. Presumption of paternity. (1) A man is presumed to be the natural father of a child if:

(a) he and the child's natural mother are or have been married to each other and the child is born during the marriage or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce or after a decree of separation is entered by a court;

(b) before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

(i) if the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce; or

(ii) if the attempted marriage is invalid without a court order, the child is born within 300 days after the termination of cohabitation;

(c) after the child's birth, he and the child's natural mother have married or attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

(i) he has acknowledged his paternity of the child in writing filed with the department of health and environmental sciences or with the district court for the county where he resides; or

(ii) with his consent, he is named as the child's father on the child's birth certificate; or

(iii) he is obligated to support the child under a written voluntary promise or by court order;

(d) while the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child; or

(e) he acknowledges his paternity of the child in a writing filed with the department of health and environmental sciences or with the district court of the county where he resides, which court or department shall promptly inform the mother of the filing of the acknowledgment, and she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the department of health and environmental sciences or with the district court of the county where the acknowledgment was filed. If another man is presumed under this section to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted.

(2) A presumption under this section may be rebutted in an appropriate action by a preponderance of the evidence.

History: En. 61-305 by Sec. 5, Ch. 512, L. 1975; R.C.M. 1947, 61-305.

Cross-References

Admissibility of paternity blood test from administrative paternity hearing, 40-5-234.

Effect of administrative order establishing paternity — state child support enforcement, 40-5-235.

Legitimacy of children born in wedlock, 40-6-201.

Legitimacy of children born after dissolution of marriage, 40-6-202.

Child legitimized by marriage of parents, 40-6-203.

Birth certificates, Title 50, ch. 15, part 2.

40-6-106. Artificial insemination. (1) If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated in law as if he were the natural father of a child thereby conceived. The husband's consent must be in writing and signed by him and his wife. The physician shall certify their signatures and the date of the insemination and file the husband's consent with the department of health and environmental sciences, where it shall be kept confidential and in a sealed file. However, the physician's failure to do so does not affect the father and child relationship. All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only upon an order of the court for good cause shown.

(2) The donor of semen provided to a licensed physician for use in artificial insemination of a married woman other than the donor's wife is treated in law as if he were not the natural father of a child thereby conceived.

History: En. 61-306 by Sec. 6, Ch. 512, L. 1975; R.C.M. 1947, 61-306.

Cross-References

Legitimacy of children born in wedlock, 40-6-201.

Vital statistics — duties of Department, 50-15-103.

Inspection of records and issuance of copies limited, 50-15-112.

40-6-107. Determination of father and child relationship — who may bring action. (1) Any interested party may bring an action for the purpose of determining the existence or nonexistence of the father and child relationship presumed pursuant to 40-6-105.

(2) An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under 40-6-105 may be brought by the child, the mother or personal representative of the child, the department of social and rehabilitation services or its appropriate local affiliate, the department of family services or its appropriate local affiliate, the personal representative or a parent of the mother if the mother has died, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor.

(3) Regardless of its terms, an agreement, other than an agreement approved by the court in accordance with 40-6-114(2), between an alleged or presumed father and the mother or child does not bar an action under this section.

(4) If an action under this section is brought before the birth of the child, all proceedings shall be stayed until after the birth, except service of process and the taking of depositions to perpetuate testimony.

History: En. 61-307 by Sec. 7, Ch. 512, L. 1975; R.C.M. 1947, 61-307; amd. Sec. 32, Ch. 609, L. 1987.

Cross-References

Depositions, Rule 27, M.R.Civ.P. (see Title 25, ch. 20).

Unborn children, 41-1-103.

Enforcement of minor's rights, 41-1-202.

Personal representative, Title 72, ch. 3, part 6.

40-6-108. Statute of limitations. (1) An action may be commenced at any time for the purpose of declaring the existence or nonexistence of the father and child relationship presumed under subsection (a), (b), or (c) of 40-6-105(1).

(2) After the presumption has been rebutted, paternity of the child by another man may be determined in the same action if the other man has been made a party.

(3) An action to determine the existence or nonexistence of the father and child relationship as to a child who has no presumed father under 40-6-105:

(a) may not be brought by the child later than 2 years after the child attains the age of majority;

(b) may be brought by a state agency at any time after the first application is made under Title IV-D of the Social Security Act for services to the child and before the child attains the age of majority. This subsection is intended to apply retroactively, within the meaning of 1-2-109, to any child for whom a paternity action was barred or could have been barred by a shorter limitation period. However, in previously barred actions that are revived by this subsection, the father is not liable to the state agency for support of the child.

(4) The father's liability for a statutory debt created by the payment of public assistance is limited to the amount of assistance paid during the 2-year period preceding commencement of the action. This subsection does not limit the subsequent accrual of a statutory debt.

(5) Section 40-6-107 and this section do not extend the time within which a right of inheritance or a right to a succession may be asserted beyond the time provided by law relating to distribution and closing of decedents' estates or to the determination of heirship or otherwise.

(6) After the conclusion of an adoption proceeding under Title 40, chapter 8, a further action to declare the existence or nonexistence of the father and child relationship of the adopted child may not be commenced, except as provided in 40-8-112.

History: En. 61-308 by Sec. 8, Ch. 512, L. 1975; R.C.M. 1947, 61-308; amd. Sec. 5, Ch. 33, L. 1979; amd. Sec. 1, Ch. 442, L. 1985; amd. Sec. 1, Ch. 129, L. 1987; amd. Sec. 1, Ch. 265, L. 1991; amd. Sec. 1, Ch. 373, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 373 in (1) near middle after "existence", inserted "or nonexistence"; deleted (1)(b) requiring that action for purpose of declaring nonexistence of presumed father and child relationship be brought within reasonable time after obtaining knowledge of relevant facts but not later than 5 years after child's birth; and made minor changes in style.

Cross-References

Adult rights, Art. II, sec. 14, Mont. Const.

When person entitled to bring action is under a disability, 27-2-401.

Minors and adults defined, 41-1-101.

40-6-109. Jurisdiction — venue. (1) The district court has jurisdiction of an action brought under this part. The action may be joined with an action for dissolution, annulment, separate maintenance, support, or adoption.

(2) For purposes of an action brought under this part, personal jurisdiction is established in the courts of this state over an individual or the individual's guardian or conservator, if:

(a) the individual is personally served within this state in accordance with Rule 4B, Montana Rules of Civil Procedure;

(b) the individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document that has the effect of waiving any contest to personal jurisdiction;

(c) the individual resided with the child in this state;

(d) the individual resided in this state and provided prenatal expenses or support for the child;

(e) the child resides in this state as a result of the acts or directives of the individual;

(f) the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse; or

(g) there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

(3) The action may be brought in the county in which the child or the alleged father resides or is found or, if the father is deceased, in which proceedings for probate of the father's estate have been or could be commenced.

History: En. 61-309 by Sec. 9, Ch. 512, L. 1975; amd. Sec. 21, Ch. 33, L. 1977; R.C.M. 1947, 61-309; amd. Sec. 57, Ch. 328, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 328 in (2) substituted language concerning jurisdiction over an individual or the individual's guardian or conservator by personal service in this state, by consent, by the individual residing with the child in this state or residing in this state and providing prenatal expenses or support for the child, by the child residing in this state as a result of the individual's acts or directives, by the individual possibly conceiving the child in this state, and by any other constitutional basis for jurisdiction for former text that read: "For purposes of an action brought under this part, personal jurisdiction is established in the courts of this state over any person who has had sexual intercourse in this state which has resulted in the birth of a child who is the subject of such proceedings. In addition to any other method provided by rule or statute, personal jurisdiction may be acquired by service in accordance with Rule 4B of the Montana Rules of Civil Procedure"; and made minor changes in style.

Cross-References

Residence — rules for determining, 1-1-215.

Venue in probate proceedings, 72-1-203.

40-6-110. Parties. The child must be made a party to the action. A minor must be represented by the minor's general guardian or a guardian ad litem appointed by the court. The child's mother or father may not represent the child as guardian or otherwise. The court may not appoint the department of family services or any of its staff as guardian ad litem for the child. The natural mother, each man presumed to be the father under 40-6-105, and each man alleged to be the natural father must be made parties or, if not subject to the jurisdiction of the court, must be given notice of the action in a manner prescribed by the court and must be given an opportunity to be heard. The court may align the parties.

History: En. 61-310 by Sec. 10, Ch. 512, L. 1975; R.C.M. 1947, 61-310; amd. Sec. 33, Ch. 609, L. 1987; amd. Sec. 3, Ch. 434, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 434 in third sentence, after "may", inserted "not" and after "services" inserted "or any of its staff"; and made minor changes in style. Amendment effective April 21, 1993.

Cross-References

Jurisdiction of persons, Rule 4B, M.R.Civ.P. (see Title 25, ch. 20).

Infants or incompetent persons as parties, Rule 17(c), M.R.Civ.P. (see Title 25, ch. 20).

Joinder of persons needed for just adjudication, Rule 19, M.R.Civ.P. (see Title 25, ch. 20).

Enforcement of minor's rights, 41-1-202.

Appointment of guardian ad litem, 41-5-512.

40-6-111. Pretrial proceedings. (1) As soon as practicable after an action to declare the existence or nonexistence of the father and child relationship has been brought, an informal hearing shall be held. The court may order that the hearing be held before a referee. The public shall be barred from the hearing. A record of the proceeding shall be kept.

(2) Upon refusal of any witness, including a party, to testify under oath or produce evidence, the court may order him to testify under oath and produce evidence concerning all relevant facts. If the refusal is upon the ground that his testimony or evidence might tend to incriminate him, the court may grant him immunity from all criminal liability on account of the testimony or evidence he is required to produce. An order granting immunity bars prosecution of the witness for any offense shown in whole or in part by testimony or evidence he is required to produce, except for perjury committed in his testimony. The refusal of a witness who has been granted immunity to obey an order to testify or produce evidence is a civil contempt of the court.

History: En. 61-311 by Sec. 11, Ch. 512, L. 1975; R.C.M. 1947, 61-311.

Cross-References

Self-incrimination and double jeopardy, Art. II, sec. 25, Mont. Const.

Subpoenas and enforcement — compelling testimony, 2-4-104.

Sittings of court — when private, 3-1-313.

Contempts, Title 3, ch. 1, part 5.

Perjury, 45-7-201.

40-6-112. Blood tests. (1) The court may, and upon request of a party shall, require the child, mother, or alleged father to submit to blood tests. The tests shall be performed by an expert qualified as an examiner of blood types, appointed by the court.

(2) The court, upon reasonable request by a party, shall order that independent tests be performed by other experts qualified as examiners of blood types.

(3) In all cases the court shall determine the number and qualifications of the experts.

History: En. 61-312 by Sec. 12, Ch. 512, L. 1975; R.C.M. 1947, 61-312.

Cross-References

Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

Opinions and expert testimony, Art. VII, M.R.Ev. (see Title 26, ch. 10).

40-6-113. Evidence relating to paternity. Evidence relating to paternity may include:

(1) evidence of sexual intercourse between the mother and alleged father at any possible time of conception;

(2) an expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;

(3) blood test results, weighted in accordance with evidence, if available, of the statistical probability of the alleged father's paternity;

(4) medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the court may, and upon request of a party shall, require the child, the mother, and the man to submit to appropriate tests; and

(5) all other evidence relevant to the issue of paternity of the child.

History: En. 61-313 by Sec. 13, Ch. 512, L. 1975; R.C.M. 1947, 61-313.

Cross-References

Basis of opinion testimony by experts, Rule 703, M.R.Ev. (see Title 26, ch. 10).

Opinions on ultimate issue, Rule 704, M.R.Ev. (see Title 26, ch. 10).

40-6-114. Pretrial recommendations. (1) On the basis of the information produced at the pretrial hearing, the judge or referee conducting the hearing shall evaluate the probability of determining the existence or nonexistence of the father and child relationship in a trial and whether a judicial declaration of the relationship would be in the best interest of the child. On the basis of the evaluation, an appropriate recommendation for settlement shall be made to the parties, which may include any of the following:

(a) that the action be dismissed with or without prejudice;

(b) that the matter be compromised by an agreement among the alleged father, the mother, and the child, in which the father and child relationship is not determined but in which a defined economic obligation is undertaken by the alleged father in favor of the child and, if appropriate, in favor of the mother, subject to approval by the judge or referee conducting the hearing. In reviewing the obligation undertaken by the alleged father in a compromise agreement, the judge or referee conducting the hearing shall consider the best interest of the child in the light of the factors enumerated in 40-6-116(5), discounted by the improbability, as it appears to him, of establishing the alleged father's paternity or nonpaternity of the child in a trial of the action. In the best interest of the child, the court may order that the alleged father's identity be kept confidential. In that case, the court may designate a person or agency to receive from the alleged father and disburse on behalf of the child all amounts paid by the alleged father in fulfillment of obligations imposed on him; and

(c) that the alleged father voluntarily acknowledge his paternity of the child.

(2) If the parties accept a recommendation made in accordance with subsection (1), judgment shall be entered accordingly.

(3) If a party refuses to accept a recommendation made under subsection (1) and blood tests have not been taken, the court shall require the parties to submit to blood tests, if practicable. Thereafter the judge or referee shall make an appropriate final recommendation. If a party refuses to accept the final recommendation, the action shall be set for trial.

(4) If the scientific evidence resulting from the blood tests conclusively shows that the defendant could not have been the father, then the instant action shall be dismissed.

(5) The guardian ad litem may accept or refuse to accept a recommendation under this section.

(6) The informal hearing may be terminated and the action set for trial if the judge or referee conducting the hearing finds unlikely that all parties would accept a recommendation he might make under subsection (1) or (3).

History: En. 61-314 by Sec. 14, Ch. 512, L. 1975; R.C.M. 1947, 61-314.

Cross-References

Guardian ad litem, 25-5-301.

Pretrial procedure — formulating issues, Rule 16, M.R.Civ.P. (see Title 25, ch. 20).

Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

Best interests of child, 40-4-212.

40-6-115. Civil action. (1) An action under this part is a civil action governed by the rules of civil procedure. The mother of the child and the alleged father are competent to testify and may be compelled to testify. Sections 40-6-111(2), 40-6-112, and 40-6-113 apply to all actions brought under this part.

(2) Testimony relating to sexual access to the mother by an unidentified man at any time or by an identified man at a time other than the probable time of conception of the child is inadmissible in evidence, unless offered by the mother.

(3) In an action against an alleged father, evidence offered by him with respect to a man who is not subject to the jurisdiction of the court concerning his sexual intercourse with the mother at or about the probable time of conception of the child is admissible in evidence only if the alleged father has undergone and made available to the court blood tests, the results of which do not exclude the possibility of his paternity of the child. A man who is identified and is subject to the jurisdiction of the court shall be made a defendant in the action.

History: En. 61-315 by Sec. 15, Ch. 512, L. 1975; R.C.M. 1947, 61-315.

Cross-References

Joinder of persons needed for just adjudication, Rule 19, M.R.Civ.P. (see Title 25, ch. 20).

Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

Entry of judgment, Rule 58, M.R.Civ.P. (see Title 25, ch. 20).

40-6-116. Judgment or order. (1) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.

(2) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a substitute birth certificate be issued under 40-6-123.

(3) (a) The judgment or order may contain any other provision directed against the appropriate party to the proceeding concerning the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child.

(b) Except when the financial responsibility of a responsible parent is in the process of being determined pursuant to the administrative procedure provided in 40-5-225, the judgment or order must contain a provision concerning the duty of child support.

(c) The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

(4) (a) Support judgments or orders ordinarily must be for periodic payments, which may vary in amount.

(b) In the best interest of the child, a lump-sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support.

(c) The court may limit the father's liability for past support of the child to the proportion of the expenses already incurred that the court considers just.

(5) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including:

(a) the needs of the child, including medical needs;

(b) the standard of living and circumstances of the parents;

(c) the relative financial means of the parents;

(d) the earning ability of the parents;

(e) the need and capacity of the child for education, including higher education;

(f) the age of the child;

(g) the financial resources and the earning ability of the child;

(h) the responsibility of the parents for the support of others;

(i) the value of services contributed by the custodial parent;

(j) the cost of day care for the child; and

(k) any custody arrangement that is ordered or decided upon.

(6) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant to 40-5-209. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the parties have entered into an agreement regarding the support amount. A verified representation of a defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information

for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in that particular case.

(b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall state its reasons for finding that the application of the standards and guidelines is unjust to the child or a party or is inappropriate in that particular case. Similar reasons must also be stated in a case in which the parties have agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

(7) The judgment or order concerning child support and each modification of a judgment or order for child support must include a provision addressing health insurance coverage in the following cases:

(a) If either party has available through an employer or other organization health insurance coverage for the child or children for which the premium is partially or entirely paid by the employer or organization, the judgment or order may contain a provision requiring that coverage for the child or children be continued or obtained.

(b) In the event that health insurance required in a child support judgment or order becomes unavailable to the party who is to provide it, through loss or change of employment or otherwise, that party shall, in the absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the requirement.

(c) The parties may by written agreement provide for the health care coverage required by this section, subject to the approval of the court.

(d) Unless otherwise provided in the decree, the health care coverage required by this section is in addition to and not in substitution, in whole or in part, for the child support obligation.

(8) (a) Unless an exception is found under 40-5-315 or 40-5-411 and the exception is included in the support order, a support obligation established by judgment, decree, or order under this section, whether temporary or final, and each modification of an existing support obligation made under 40-6-118 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A support order that omits the exception or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment to the support order or for any further action by the court.

(b) After October 1, 1993, if a support order subject to income withholding is expressed in terms of a monthly obligation, the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's regular pay period.

(9) For the purposes of income withholding as provided in subsection (8), whenever the district court establishes or modifies a child support obligation, the judgment, decree, or order must include a provision requiring the parent obligated to pay support to inform the court and, if the department of social and rehabilitation services is providing services under Title IV-D of the Social Security Act for the enforcement of the judgment, decree, or order, the department, of the following:

(a) the name and address of the parent's current employer;

(b) whether the parent has access to health insurance through an employer or other group; and

(c) if insurance coverage is available, the health insurance policy information.

(10) If the department of social and rehabilitation services is providing or later provides support enforcement services under Title IV-D of the Social Security Act, each district court order or modification of an order must contain a statement providing that the noncustodial parent, without further order of the court, is required to obtain and maintain health insurance coverage as provided in 40-5-208. Failure to include a warning statement in the judgment or order does not preclude the imposition of sanctions under 40-5-208.

(11) Each district court judgment, decree, or order establishing a final child support obligation under this part and each modification of a final order for child support must contain a statement that the order is subject to review and modification by the department of social and rehabilitation services upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under Title IV-D of the Social Security Act for the enforcement of the order.

History: En. 61-316 by Sec. 16, Ch. 512, L. 1975; R.C.M. 1947, 61-316; amd. Sec. 2, Ch. 702, L. 1989; amd. Sec. 7, Ch. 266, L. 1991; amd. Sec. 2, Ch. 635, L. 1991; amd. Sec. 4, Ch. 294, L. 1993; amd. Sec. 21, Ch. 631, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 294 in (6)(a), near middle, inserted second sentence requiring use of guidelines in all cases, inserted third sentence concerning verified representation of income, and in fourth sentence inserted first clause concerning presumption of adequate and reasonable support; in (6)(b), in first sentence, substituted "finds that the guideline amount is unjust or inappropriate in a particular case" for "does not apply these standards and guidelines to determine child support" and inserted last two sentences concerning agreement on support amount and statement of ordinary support amount when varied; and made minor changes in style. Amendment effective April 9, 1993.

Chapter 631 inserted (8)(b) regarding withholding on weekly or biweekly basis; and made minor changes in style.

Cross-References

Property exempt from execution — earnings of judgment debtor, 25-13-614.

Entry of judgment, Rule 58, M.R.Civ.P. (see Title 25, ch. 20).

Necessity determined by standard of living, 40-2-210.

Child support, 40-4-204.

Best interest of child, 40-4-212.

Visitation, 40-4-217.

Enforcement of support, Title 40, ch. 5.

Obligations of parents for the support and education of their children, 40-6-211.

Remedy when parent dies without providing for support of child, 40-6-213.

Custody, services, and earnings of child, 40-6-221.

New birth certificate upon proof of legitimation, 50-15-207.

40-6-117. Enforcement of judgment or order. (1) If existence of the father and child relationship is declared or paternity or a duty of support has been acknowledged or adjudicated under this part or under prior law, the court may order support payments to be made to the mother, the clerk of the court, or a person, corporation, or agency designated to administer them for the benefit of the child under the supervision of the court.

(2) Willful failure to obey the judgment or order of the court is a civil contempt of the court. All remedies for the enforcement of judgments apply.

(3) (a) A district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the child support to be paid to:

(i) the legal custodian of the minor child;

(ii) (A) any other person, organization, or agency having legal physical custody of the minor child or collecting child support on behalf of the minor child under a legal assignment of rights; or

(B) the court for the benefit of the minor child;

(iii) any other person or agency designated as caretaker of the minor child by agreement of the legal custodian; or

(iv) any assignee or other person, organization, or agency authorized to receive or collect child support.

(b) A judgment, decree, or order that omits the provision required by subsection (3)(a) is subject to the requirements of subsection (3)(a) without need for an amendment to the judgment, decree, or order or for any further action by the court.

History: En. 61-318 by Sec. 18, Ch. 512, L. 1975; R.C.M. 1947, 61-318; amd. Sec. 22, Ch. 631, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 631 inserted (3) requiring a provision that support be paid to the child's caretaker or other agency authorized to receive or collect support.

Cross-References

Contempts, Title 3, ch. 1, part 5.

Judgments — method of enforcement, Title 25, ch. 13, part 2.

Enforcement of order to pay money, 25-13-204.

Remedies, Title 27.

Payment of maintenance or support to court, 40-4-206.

40-6-118. Modification of judgment or order. The court has continuing jurisdiction to modify or revoke a judgment or order:

(1) for future education and support; and

(2) with respect to matters listed in 40-6-116(3), 40-6-116(4), and 40-6-117(2), except that a court entering a judgment or order for the payment of a lump sum or the purchase of an annuity under 40-6-116(4) may specify that the judgment or order may not be modified or revoked.

History: En. 61-319 by Sec. 19, Ch. 512, L. 1975; R.C.M. 1947, 61-319.

Cross-References

Child support, 40-4-204.

Modification and termination of provisions for maintenance, support, and property disposition, 40-4-208.

Obligations of parents for the support and education of their children, 40-6-211.

40-6-119. Rights to counsel — free transcript on appeal. (1) At the pretrial hearing and in further proceedings, any party may be represented by counsel. The court shall appoint counsel for a party who is financially unable to obtain counsel.

(2) If a party is financially unable to pay the cost of a transcript, the court shall furnish on request a transcript for purposes of appeal.

History: **En. 61-320 by Sec. 20, Ch. 512, L. 1975; R.C.M. 1947, 61-320.**

Cross-References

Right to counsel, Art. II, sec. 24, Mont. Const.

Copies of proceedings, 3-5-604.

40-6-120. Hearings and records — confidentiality. Notwithstanding any other law concerning public hearings and records, any hearing or trial held under this part shall be held in closed court without admittance of any person other than those necessary to the action or proceeding. All papers and records, other than the final judgment, pertaining to the action or proceeding, whether part of the permanent record of the court or of a file in any agency of the state or of any political subdivision or elsewhere, are subject to inspection only upon consent of the court and all interested persons or in exceptional cases only upon an order of the court for good cause shown.

History: **En. 61-321 by Sec. 21, Ch. 512, L. 1975; R.C.M. 1947, 61-321.**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Sittings of court — when private, 3-1-313.

40-6-121. Action to declare mother and child relationship. Any interested party may bring an action to determine the existence or nonexistence of a mother and child relationship. Insofar as practicable, the provisions of this part applicable to the father and child relationship apply.

History: **En. 61-322 by Sec. 22, Ch. 512, L. 1975; R.C.M. 1947, 61-322.**

40-6-122. Promise to render support. (1) Any promise in writing to furnish support for a child growing out of a supposed or alleged father and child relationship does not require consideration and is enforceable according to its terms, subject to 40-6-107(4).

(2) In the best interest of the child or the mother, the court may, and upon the promisor's request shall, order the promise to be kept in confidence and designate a person or agency to receive and disburse on behalf of the child all amounts paid in performance of the promise.

History: **En. 61-323 by Sec. 23, Ch. 512, L. 1975; amd. Sec. 22, Ch. 33, L. 1977; R.C.M. 1947, 61-323.**

Cross-References

Contracts which violate policy of the law — exemption from responsibility, 28-2-702.

Restraints upon legal proceedings void, 28-2-708.

Consideration, Title 28, ch. 2, part 8.

Best interest of child, 40-4-212.

40-6-123. Birth records. (1) Upon order of a court of this state or upon request of a court of another state, the department of health and environmental sciences shall prepare a substitute certificate of birth consistent with the findings of the court and shall substitute the new certificate for the original certificate of birth.

(2) The fact that the father and child relationship was declared after the child's birth shall not be ascertainable from the new certificate but the actual place and date of birth shall be shown.

(3) The evidence upon which the new certificate was made and the original birth certificate shall be kept in a sealed and confidential file and shall be subject to inspection only upon consent of the court and all interested persons or in exceptional cases only upon an order of the court for good cause shown.

History: **En. 61-324 by Sec. 24, Ch. 512, L. 1975; R.C.M. 1947, 61-324.**

Cross-References

Child of unknown parentage, 50-15-203.

Delayed or amended birth certificate, 50-15-204.

Establishment of date and place of birth when certificate cannot be obtained, 50-15-205.

Permissible disclosure of illegitimate birth, 50-15-206.

New birth certificate upon proof of legitimation, 50-15-207.

40-6-124. Repealed. Sec. 15, Ch. 530, L. 1981.

History: En. 61-328 by Sec. 1, Ch. 422, L. 1977; R.C.M. 1947, 61-328.

40-6-125. Children born out of wedlock — relinquishment — consent. (1) If the mother of a child born out of wedlock proposes to relinquish the child for adoption and the relinquishment or consent of the birth father cannot be obtained, the child may not be placed for adoption until the parental rights of the father are terminated by the court as provided in this part, by the court pursuant to Title 41, chapter 3, or by a court of competent jurisdiction in another state or country.

(2) Pending the termination or other disposition of the rights of the father of the child born out of wedlock, the mother may execute a relinquishment, in accordance with 40-6-135(2) through (5), terminating her rights to the child. If the mother relinquishes the child, the agency of the state of Montana, a licensed adoption agency, or the person to whom the child is relinquished may file a petition under this part or a petition of dependency or neglect pursuant to Title 41, chapter 3. Pending disposition of the petition, the court may enter an order authorizing temporary care of the child.

(3) At the request of the mother, her execution of a relinquishment must be delayed until after the court has determined the identity of the father and has awarded custody of the child to the father or terminated his rights under this part.

History: En. 61-329 by Sec. 2, Ch. 422, L. 1977; R.C.M. 1947, 61-329; amd. Sec. 4, Ch. 530, L. 1981; amd. Sec. 2, Ch. 1, Sp. L. 1981; amd. Sec. 1, Ch. 683, L. 1991.

Cross-References

Consent required for adoption, 40-8-111.

Effect of final decree of adoption, 40-8-125.

40-6-126. Notice of intent to claim paternity. (1) Before the birth of a child born out of wedlock, a person claiming under oath to be the father of the child may file a verified notice of intent to claim paternity with the district court in any county of this state. The form of the notice shall be prescribed by the director of the department of health and environmental sciences and supplied to the clerks of the district courts. The notice shall include the claimant's address. On the next business day after receipt of the notice, the court shall transmit the notice to the records and statistics bureau of the department of health and environmental sciences. If the mother's address is stated on the notice, the records and statistics bureau shall send a copy of the notice by first-class mail to the mother of the child at the stated address.

(2) A person filing a notice of intent to claim paternity or acknowledging paternity in accordance with 40-6-105 shall be presumed to be the father of the child for purposes of this part unless the mother denies that the claimant is the father. Such notice is admissible in a paternity proceeding under 40-6-107 and creates a rebuttable presumption as to the paternity of that child for purposes of that section. Such notice creates a rebuttable presumption as

to paternity of the child for purposes of a dependency or neglect proceeding under Title 41, chapter 3.

(3) A person who makes a timely filing of notice of intent to claim paternity or who formally acknowledges paternity under 40-6-105 is entitled to notice of any hearing to determine the identity of the father of the child and any hearing to determine or terminate his paternal rights to the child.

History: En. 61-330 by Sec. 3, Ch. 422, L. 1977; R.C.M. 1947, 61-330.

Cross-References

Definition and examples of disputable presumptions, 26-1-602.

Presumptions, Art. III, M.R.Ev. (see Title 26, ch. 10).

Certificates, 50-15-109.

40-6-127. Expected child — intent to release or consent — petition and notice. (1) In order to provide due notice at the earliest possible time to a putative father who may have an interest in the custody of an expected child or in the mother's intended release of an expected child for adoption and in order to facilitate early placement of a child for adoption, a woman pregnant out of wedlock may file with the district court an ex parte petition which sets forth the following:

(a) her intent to release her expected child for adoption;

(b) the approximate date and location of conception;

(c) the expected date of her delivery; and

(d) the identity and whereabouts of the putative father of her expected child.

(2) The petition may allege more than one putative father whenever circumstances warrant. The petition shall be verified. Upon the filing of the petition, the court shall issue a notice of intent to release, which notice shall be served upon the putative father or fathers in the manner provided by the Montana Rules of Civil Procedure or in any other manner which the court may direct. Proof of such service shall be filed with the court.

(3) A notice of intent to release shall:

(a) indicate the approximate date and location of conception of the child and the expected date of delivery;

(b) inform the putative father of his right under 40-6-126 to file a notice of intent to claim paternity before the birth of the child;

(c) inform the putative father of the rights to which his filing of notice of intent to claim paternity will entitle him under 40-6-126(3); and

(d) inform the putative father that his failure to file a notice of intent to claim paternity before the expected date of delivery constitutes a waiver of his right to receive the notice to which he would otherwise be entitled under 40-6-126(3) and constitutes a denial of his interest in the custody of the child, which denial shall result in the court's termination of his rights to the child.

(4) The petition shall be filed with the court not later than 30 days prior to the expected date of delivery.

History: En. 61-331 by Sec. 4, Ch. 422, L. 1977; R.C.M. 1947, 61-331.

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

Adoption of children, Title 40, ch. 8, part 1.

Certificates, 50-15-109.

40-6-128. Proceeding to determine father's identity and terminate rights. (1) If a child is born out of wedlock and the mother executes or proposes to execute a release terminating her rights to the child or if the child otherwise becomes the subject of an adoption proceeding, the agency or person to whom the child has been or is to be relinquished or the mother or person having custody of the child shall file a petition in the district court to terminate the parental rights of the father, unless the father's relationship to the child has been previously terminated or determined not to exist by the court. The court shall hold a hearing as soon as practical to determine the identity of the father and to determine or terminate the rights of the father as provided in this section and in 40-6-129 and 40-6-130. This section is not applicable if the father is a person whose consent to adoption is not required under 40-8-111.

(2) Proof of service of a notice of intent to release or the putative father's verified acknowledgment of notice of intent to release shall be filed with the court, if such notice was given to the putative father. The court shall request the records and statistics bureau of the department of health and environmental sciences to send to the court a copy of any notice of intent to claim paternity of the particular child which the bureau has received.

(3) If the mother has failed to name a putative father or has failed to file a notice of intent to release, the court shall cause inquiry to be made of the mother in an effort to identify the natural father. The inquiry shall include the following:

(a) whether the mother was married at the time of conception of the child or at any time thereafter;

(b) whether the mother was cohabiting with a man at the time of conception or birth of the child;

(c) whether the mother has received support payments or promises of support payments with respect to the child or in connection with her pregnancy; or

(d) whether any man has formally or informally acknowledged or declared his possible paternity of the child.

(4) Notwithstanding this section or any other provisions of law and in consideration of her right to privacy, no mother of a child who is the subject of proceedings under this part may be compelled to testify concerning or to divulge the identity of the father or possible father of that child.

(5) Notice of the hearing shall be served upon the following persons in the manner appropriate under the Montana Rules of Civil Procedure or any manner which the court shall direct:

(a) a putative father who has timely filed a notice of intent to claim paternity as provided in 40-6-126 or 40-6-127;

(b) a putative father who has not been served with a notice of intent to release at least 30 days before the expected date of delivery specified in the notice of intent to release;

(c) any other male who was not served pursuant to 40-6-127(2) with a notice of intent to release and who the court, after inquiry of the mother or any other appropriate person, has reason to believe may be the father of the child.

(6) The notice of hearing shall inform the putative father that his failure to appear at the hearing constitutes a denial of his interest in custody of the child, which denial will result in the court's termination of his rights to the child.

(7) Proof of service of the notice of hearing required by subsection (5) shall be filed with the court. A verified acknowledgment of service by the party to be served is proof of personal service. Notice of hearing need not be required if the putative father is present at the hearing. A waiver of notice of hearing by a person entitled to receive it is sufficient. If no person has been identified as the natural father or possible father, the court, on the basis of all information available, shall determine whether publication or public posting of notice of the proceeding is likely to lead to identification and if so shall order publication or public posting at the times and places and in the manner it considers appropriate. The name of the natural mother may be included in such publication only with her written consent.

(8) At the hearing, the court shall receive evidence as to the identity of the father of the child. Based upon the evidence received and the court's inquiry, the court shall enter a finding identifying the father or declaring that the identity of the father cannot be determined.

(9) If the court finds that the father of the child is a person who did not receive either a timely notice of intent to release pursuant to 40-6-127 or a notice required pursuant to subsection (5) of this section and who has not waived his right to notice of hearing and is not present at the hearing, the court shall adjourn further proceedings until that person is served with a notice of hearing.

History: En. 61-332 by Sec. 5, Ch. 422, L. 1977; R.C.M. 1947, 61-332.

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

Legitimacy of children born in wedlock, 40-6-201.

Legitimacy of children born after dissolution of marriage, 40-6-202.

Effect of final decree, 40-8-125.

Certificates, 50-15-109.

40-6-129. Grounds for termination of father's rights. (1) If the court has proof that the person whom it determines pursuant to 40-6-128 to be the father of the child was timely served with notice of intent to release pursuant to 40-6-127 or was served with or waived the notice of hearing required by 40-6-128(5), the court may permanently terminate the rights of the putative father if the putative father:

(a) submits a verified acknowledgment of his paternity and a denial of his interest in custody of the child;

(b) files a denial of paternity. For purposes of this section the filing of the denial of paternity constitutes a waiver of notice of hearing and constitutes a denial of his interests in the custody of the child.

(c) was served with a notice of intent to release in accordance with 40-6-127(2) at least 30 days before the expected date of delivery specified in that notice but failed to file an intent to claim paternity either before the expected date of delivery or before the birth of the child; or

(d) is given proper notice of hearing in accordance with subsection (5) or (7) of 40-6-128 but either fails to appear at the hearing or appears and denies his interest in the custody of the child.

(2) If the identity of the father cannot be determined or if the identity of the father is known but his whereabouts cannot be determined, the court shall receive evidence to determine the facts in the matter. The court may terminate the rights of the putative father if the court finds from the evidence that reasonable effort has been made to identify and locate the father and that any of the following circumstances exist:

(a) The putative father, whose identity is not known, has not made a provision for the child's care and did not provide support for the mother during her pregnancy or during her hospitalization.

(b) The putative father, whose identity is known but whose whereabouts are unknown, has not provided support for the mother, has not shown any interest in the child, and has not made provision for the child's care, for at least 90 days preceding the hearing required under 40-6-128.

(3) Subject to the disposition of an appeal, upon the expiration of 6 months after an order terminating parental rights is issued under this section, the order cannot be questioned by any person, in any manner or upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter.

History: En. 61-333 by Sec. 6, Ch. 422, L. 1977; R.C.M. 1947, 61-333.

Cross-References

Presumption of paternity, 40-6-105.

40-6-130. Best interests of the child — custody to father — legitimation. (1) If the putative father appears at the hearing and requests custody of the child, the court shall inquire into his fitness and his ability to properly care for the child and shall determine whether the father's parental rights should be given recognition in view of his effort or lack of effort to make provision for the mother while she was pregnant and for the child upon birth and whether the best interests of the child will be served by granting custody to him or to the agency of the state of Montana, licensed adoption agency, or person to whom the mother has released or proposed to release custody of the child. If the court finds that it would not be in the best interests of the child to grant custody to the putative father, the court shall terminate his rights to the child.

(2) If the mother of the child has released the custody of the child to an agency of the state of Montana, a licensed adoption agency, or a person, the agency or person shall be a proper party to petition the court for custody of the child.

(3) If the parental rights of the mother are terminated pursuant to this part or other law and if the court awards custody of the child out of wedlock to the putative father, the court shall enter an order granting custody to the putative father and legitimating the child for all purposes.

History: En. 61-334 by Sec. 7, Ch. 422, L. 1977; R.C.M. 1947, 61-334.

Cross-References

Best interest of child, 40-4-212.

Child adoption agencies, Title 52, ch. 2, part 4.

40-6-131. Uniformity of application and construction. This part shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this part among states enacting it.

History: En. 61-327 by Sec. 29, Ch. 512, L. 1975; R.C.M. 1947, 61-327.

40-6-132. Repealed. Sec. 5, Ch. 1, Sp. L. 1981.

History: En. Sec. 1, Ch. 530, L. 1981.

40-6-133. Repealed. Sec. 5, Ch. 1, Sp. L. 1981.

History: En. Sec. 2, Ch. 530, L. 1981.

40-6-134. Repealed. Sec. 5, Ch. 1, Sp. L. 1981.

History: En. Sec. 3, Ch. 530, L. 1981.

40-6-135. Relinquishment of parental rights — form, execution, and revocation. (1) A parent or guardian who proposes to relinquish custody of a child for purposes of placing the child for adoption may do so by executing a relinquishment by which all parental rights to the child are voluntarily relinquished to the department of family services, a licensed adoption agency, or the prospective adoptive parents. A parent may not execute a relinquishment to the department or a licensed adoption agency unless the department or the agency has agreed to accept custody of the child until the child is adopted.

(2) A relinquishment may be executed at any time, except that a birth mother may not execute a relinquishment before the child is 72 hours old.

(3) Except as otherwise provided in this section, a relinquishment must be by a separate instrument executed before a notary public.

(4) If the person from whom a relinquishment is required is a member of any of the armed services or is in prison, the relinquishment may be executed and acknowledged before any person authorized by law to administer oaths.

(5) If the relinquishment is executed in another state or country, the court having jurisdiction over the adoption proceeding in this state shall determine whether the relinquishment was executed in accordance with the laws of that state or country and may not proceed unless it finds that the relinquishment was so executed.

(6) Upon the filing of a properly and voluntarily executed relinquishment of a child by a parent or guardian, the court shall immediately issue an order terminating the rights of that parent or guardian to that child. If the rights of both parents, the surviving parent, or the guardian have been terminated and if the department of family services or a licensed adoption agency has agreed to accept custody of the child until the child is adopted, the court shall issue an order committing the child to the department or to the licensed adoption agency to which the relinquishment was given.

(7) Entry of an order terminating the rights of both parents pursuant to subsection (6) terminates the jurisdiction of the district court over the child in any divorce or separate maintenance action.

(8) Upon petition of a person who executed a relinquishment and of the department of family services or the licensed adoption agency to which the child was relinquished, the court with which the relinquishment was filed may grant a hearing to consider whether the relinquishment should be revoked. A relinquishment may not be revoked if the child has been placed for adoption. A verbatim record of testimony related to the petition must be made.

History: En. Sec. 1, Ch. 1, Sp. L. 1981; amd. Sec. 1, Ch. 225, L. 1987; amd. Sec. 2, Ch. 683, L. 1991.

Cross-References

Officers who may administer oaths, 1-6-101.

Reporter's report prima facie evidence, 3-5-612.

Jurisdiction — child custody proceedings, 40-4-211.

Minor parent, 40-8-105.

Consent required for adoption, 40-8-111.

Withdrawal of consent, 40-8-112.

Effect of final decree of adoption, 40-8-125.

Parent-child legal relationship termination, Title 41, ch. 3, part 6.

Child adoption agencies, Title 52, ch. 2, part 4.

Part 2

Obligations of Parents

Part Cross-References

Mandatory child safety restraint systems, 61-9-419 through 61-9-423.

40-6-201. Legitimacy of children born in wedlock. All children born in wedlock are presumed to be legitimate.

History: En. Sec. 280, Civ. C. 1895; re-en. Sec. 3738, Rev. C. 1907; re-en. Sec. 5830, R.C.M. 1921; Cal. Civ. C. Sec. 193; Field Civ. C. Sec. 86; re-en. Sec. 5830, R.C.M. 1935; R.C.M. 1947, 61-101.

Cross-References

Presumption of legitimacy, 26-1-602.

Presumptions, Art. III, M.R.Ev. (see Title 26, ch. 10).

Birth — vital statistics, Title 50, ch. 15, part 2.

40-6-202. Legitimacy of children born after dissolution of marriage. All children of a woman who has been married, born within 10 months after the dissolution of her marriage, are presumed to be legitimate children of that marriage.

History: En. Sec. 281, Civ. C. 1895; re-en. Sec. 3739, Rev. C. 1907; re-en. Sec. 5831, R.C.M. 1921; Cal. Civ. C. Sec. 194; Based on Field Civ. C. Sec. 87; re-en. Sec. 5831, R.C.M. 1935; R.C.M. 1947, 61-102.

Cross-References

Complete list of conclusive presumptions, 26-1-601.

Presumption of legitimacy, 26-1-602.

Birth — vital statistics, Title 50, ch. 15, part 2.

40-6-203. Child legitimatized by marriage of parents. A child born before wedlock becomes legitimate by the subsequent marriage of its parents.

History: En. Sec. 11, p. 410, Bannack Stat.; re-en. Sec. 11, p. 521, Cod. Stat. 1871; re-en. Sec. 864, 5th Div. Rev. Stat. 1879; re-en. Sec. 1425, 5th Div. Comp. Stat. 1887; amd. Sec. 302, Civ. C. 1895; re-en. Sec. 3760, Rev. C. 1907; re-en. Sec. 5852, R.C.M. 1921; Cal. Civ. C. Sec. 215; re-en. Sec. 5852, R.C.M. 1935; R.C.M. 1947, 61-123.

Cross-References

Form of application, license, marriage certificate, and consent — names of children included, 40-1-107.

New birth certificate upon proof of legitimation, 50-15-207.

40-6-204 through 40-6-210 reserved.

40-6-211. Obligations of parents for the support and education of their children. The parent or parents entitled to the custody of a child must give him support and education suitable to his circumstances.

History: En. Sec. 283, Civ. C. 1895; re-en. Sec. 3741, Rev. C. 1907; re-en. Sec. 5833, R.C.M. 1921; Cal. Civ. C. Sec. 196; Field Civ. C. Sec. 89; re-en. Sec. 5833, R.C.M. 1935; amd. Sec. 21, Ch. 293, L. 1975; R.C.M. 1947, 61-104.

Cross-References

Earnings and accumulations of married persons, 40-2-205.

Earnings and accumulations when separated, 40-2-206.

Work and labor of married person, 40-2-207.

Individual property of married person — how far liable, 40-2-209.

Necessity determined by standard of living, 40-2-210.

Nonsupport, 45-5-621.

Endangering the welfare of children, 45-5-622.

40-6-212. Allowance to parent. The proper court may direct an allowance to be made to the parent of a child out of the child's property for the past or future support and education of the child, on such conditions as may be proper, whenever such direction is for the child's benefit.

History: En. Sec. 288, Civ. C. 1895; re-en. Sec. 3746, Rev. C. 1907; re-en. Sec. 5838, R.C.M. 1921; Cal. Civ. C. Sec. 201; Field Civ. C. Sec. 92; re-en. Sec. 5838, R.C.M. 1935; amd. Sec. 14, Ch. 33, L. 1977; R.C.M. 1947, 61-109.

Cross-References

Duty of child to support indigent parents, 40-6-301.

40-6-213. Remedy when parent dies without providing for support of child. If a parent chargeable with the support of a child dies leaving the child chargeable to the county and leaving an estate sufficient for the child's support, the county commissioners of the county may claim provision for the child's support from the parent's estate by civil action and for this purpose may have the same remedies as any creditors against that estate and against the heirs, devisees, and the next of kin of the parent.

History: En. Sec. 292, Civ. C. 1895; re-en. Sec. 3750, Rev. C. 1907; re-en. Sec. 5842, R.C.M. 1921; Cal. Civ. C. Sec. 205; Based on Field Civ. C. Sec. 96; re-en. Sec. 5842, R.C.M. 1935; amd. Sec. 15, Ch. 33, L. 1977; R.C.M. 1947, 61-113.

Cross-References

Child support, 40-4-204.

Modification and termination of support, 40-4-208.

Estates — creditors' claims, Title 72, ch. 3, part 8.

40-6-214. Reciprocal duties of parents and children in maintaining each other. It is the duty of the father, the mother, and the children of any poor person who is unable to maintain himself by work to maintain such person to the extent of their ability. The promise of an adult child to pay for necessaries previously furnished to such parent is binding.

History: En. Sec. 293, Civ. C. 1895; re-en. Sec. 3751, Rev. C. 1907; re-en. Sec. 5843, R.C.M. 1921; Cal. Civ. C. Sec. 206; Field Civ. C. Sec. 97; re-en. Sec. 5843, R.C.M. 1935; R.C.M. 1947, 61-114.

Cross-References

Earnings and accumulations of married person, 40-2-205.

Earnings and accumulations of married person when separated, 40-2-206.

Work and labor of married person, 40-2-207.

Individual property of married person — how far liable, 40-2-209.

Necessity determined by standard of living, 40-2-210.

Duty of child to support indigent parents, 40-6-301.

Minor cannot disaffirm contract for necessaries, 41-1-305.

40-6-215. When parent liable for necessaries supplied to child. If a parent neglects to provide articles necessary for his child under his charge, according to his circumstances, a third person may in good faith supply such necessaries and recover the reasonable value thereof from the parent.

History: En. Sec. 294, Civ. C. 1895; re-en. Sec. 3752, Rev. C. 1907; re-en. Sec. 5844, R.C.M. 1921; Cal. Civ. C. Sec. 207; Field Civ. C. Sec. 98; re-en. Sec. 5844, R.C.M. 1935; R.C.M. 1947, 61-115.

Cross-References

Earnings and accumulations of married person, 40-2-205.

Earnings and accumulations of married person when separated, 40-2-206.

Work and labor of married person, 40-2-207.

Individual property of married person — how far liable, 40-2-209.

Necessity determined by standard of living, 40-2-210.

Minor cannot disaffirm contract for necessaries, 41-1-305.

Parents liable to Department for Aid to Families With Dependent Children payments, 53-4-248.

40-6-216. When parent not liable for support furnished child. A parent is not bound to compensate the other parent or a relative for the voluntary support of his child, without an agreement for compensation, or to compensate a stranger for the support of a child who has abandoned the parent without just cause.

History: En. Sec. 295, Civ. C. 1895; re-en. Sec. 3753, Rev. C. 1907; re-en. Sec. 5845, R.C.M. 1921; Cal. Civ. C. Sec. 208; Field Civ. C. Sec. 99; re-en. Sec. 5845, R.C.M. 1935; R.C.M. 1947, 61-116.

Cross-References

Liability for acts or debts of spouse, 40-2-106.

Individual property of married person — how far liable, 40-2-209.

Necessity determined by standard of living, 40-2-210.

Minor cannot disaffirm contract for necessaries, 41-1-305.

40-6-217. Married person not bound for support of spouse's children by former marriage. A married person is not bound to support his spouse's children by a former marriage; but if he receives them into his family and supports them, it is presumed that he does so as a parent and, where such is the case, they are not liable to him for their support nor he to them for their services.

History: En. Sec. 296, Civ. C. 1895; re-en. Sec. 3754, Rev. C. 1907; re-en. Sec. 5846, R.C.M. 1921; Cal. Civ. C. Sec. 209; Field Civ. C. Sec. 100; re-en. Sec. 5846, R.C.M. 1935; amd. Sec. 22, Ch. 293, L. 1975; R.C.M. 1947, 61-117.

Cross-References

Debts of spouse contracted before marriage, 40-2-208.

40-6-218. Compensation and support of person after attaining majority. Where a person, after attaining majority, continues to serve and to be supported by the parent, neither party is entitled to compensation, in the absence of an agreement therefor.

History: En. Sec. 297, Civ. C. 1895; re-en. Sec. 3755, Rev. C. 1907; re-en. Sec. 5847, R.C.M. 1921; Cal. Civ. C. Sec. 210; Field Civ. C. Sec. 101; re-en. Sec. 5847, R.C.M. 1935; amd. Sec. 16, Ch. 33, L. 1977; R.C.M. 1947, 61-118.

Cross-References

Minors and adults defined, 41-1-101.

40-6-219 and 40-6-220 reserved.

40-6-221. Custody, services, and earnings of child. The father and mother of an unmarried minor child are equally entitled to the custody, services, and earnings of the child. If either parent be dead or unable or refuses to take the custody or has abandoned his or her family, the other is entitled to the custody, services, and earnings of the child, unless custody is determined otherwise pursuant to 40-4-221.

History: **En. Sec. 284, Civ. C. 1895; re-en. Sec. 3742, Rev. C. 1907; amd. Sec. 1, Ch. 61, L. 1915; re-en. Sec. 5834, R.C.M. 1921; Cal. Civ. C. Sec. 197; Based on Field Civ. C. Sec. 90; re-en. Sec. 5834, R.C.M. 1935; amd. Sec. 26, Ch. 512, L. 1975; amd. Sec. 13, Ch. 33, L. 1977; R.C.M. 1947, 61-105; amd. Sec. 5, Ch. 127, L. 1979.**

Cross-References

Best interest of child, 40-4-212.

Minor cannot disaffirm contract for necessaries, 41-1-305.

Child labor, Title 41, ch. 2.

40-6-222. Custody of children where husband and wife living separate. The husband and father, as such, has no rights superior to those of the wife and mother in regard to the care, custody, education, and control of the children of the marriage while such husband and wife live separate and apart from each other.

History: **En. Sec. 285, Civ. C. 1895; re-en. Sec. 3743, Rev. C. 1907; re-en. Sec. 5835, R.C.M. 1921; Cal. Civ. C. Sec. 198; re-en. Sec. 5835, R.C.M. 1935; R.C.M. 1947, 61-106.**

Cross-References

Earnings and accumulations of married person — when separated, 40-2-206.

40-6-223. When parent may bring action for the exclusive control of children — decree. Without application for divorce, the husband or wife may bring an action for the exclusive control of the children of the marriage, and the court or judge may, during the pendency of such action or at the final hearing thereof or afterwards, make such order or decree in regard to the support, care, custody, education, and control of the children of the marriage as may be just and in accordance with the natural rights of the parents and the best interests of the children and may at any time thereafter amend, vary, or modify such order or decree as the natural rights and the interests of the parties, including the children, may require.

History: **En. Sec. 286, Civ. C. 1895; re-en. Sec. 3744, Rev. C. 1907; re-en. Sec. 5836, R.C.M. 1921; Cal. Civ. C. Sec. 199; re-en. Sec. 5836, R.C.M. 1935; R.C.M. 1947, 61-107.**

Cross-References

Necessity determined by standard of living, 40-2-210.

Alteration of legal relation by contract — separation agreement, 40-2-303.

Temporary order or temporary injunction, 40-4-121.

Best interest of child, 40-4-212.

Temporary orders, 40-4-213.

Modification of custody, 40-4-219.

40-6-224. When custody may be awarded without dissolution proceedings. When a husband and wife live in a state of separation without the marriage being dissolved, any court of competent jurisdiction, upon application of either, if an inhabitant of this state, may inquire into the custody of any unmarried minor child of the marriage and may award the custody of such child to either for such time and under such regulations as the case may require.

History: **En. Sec. 301, Civ. C. 1895; re-en. Sec. 3759, Rev. C. 1907; re-en. Sec. 5851, R.C.M. 1921; Cal. Civ. C. Sec. 214; Field Civ. C. Sec. 106; re-en. Sec. 5851, R.C.M. 1935; amd. Sec. 17, Ch. 33, L. 1977; R.C.M. 1947, 61-122.**

Cross-References

Legal separation, 40-4-104.

Temporary order or temporary injunction, 40-4-121.

Separation agreement, 40-4-201.
Temporary custody orders, 40-4-213.

40-6-225 through 40-6-230 reserved.

40-6-231. Right of parent to determine the residence of child. A parent entitled to the custody of a child has a right to change his residence, subject to the power of the proper court to restrain a removal which would prejudice the rights or welfare of the child.

History: En. Sec. 300, Civ. C. 1895; re-en. Sec. 3758, Rev. C. 1907; re-en. Sec. 5850, R.C.M. 1921; Cal. Civ. C. Sec. 213; Field Civ. C. Sec. 104; re-en. Sec. 5850, R.C.M. 1935; R.C.M. 1947, 61-121.

Cross-References

Residence — rules for determining, 1-1-215.

Best interest of child, 40-4-212.

40-6-232. Parental control over property of child. The parent, as such, has no control over the property of the child.

History: En. Sec. 289, Civ. C. 1895; re-en. Sec. 3747, Rev. C. 1907; re-en. Sec. 5839, R.C.M. 1921; Cal. Civ. C. Sec. 202; Field Civ. C. Sec. 93; re-en. Sec. 5839, R.C.M. 1935; R.C.M. 1947, 61-110.

Cross-References

Enforcement of minor's rights, 41-1-202.

Delegation of power by minors forbidden, 41-1-301.

40-6-233. Remedy for parental abuse. The abuse of parental authority is the subject of judicial cognizance in a civil action brought by the child or by its relative within the third degree or by the county commissioners of the county where the child resides. When the abuse is established, the child may be freed from the dominion of the parent and the duty of support and education enforced.

History: En. Sec. 290, Civ. C. 1895; re-en. Sec. 3748, Rev. C. 1907; re-en. Sec. 5840, R.C.M. 1921; Cal. Civ. C. Sec. 203; Based on Field Civ. C. Sec. 94; re-en. Sec. 5840, R.C.M. 1935; R.C.M. 1947, 61-111.

Cross-References

Child abuse, neglect, and dependency, Title 41, ch. 3.

Endangering the welfare of children, 45-5-622.

Sexual abuse of children, 45-5-625.

40-6-234. When parental authority ceases. The authority of the parent ceases:

(1) upon the appointment, by a court, of a guardian of the person of a child;
(2) upon the marriage of a child; or
(3) upon its attaining majority.

History: En. Sec. 291, Civ. C. 1895; re-en. Sec. 3749, Rev. C. 1907; re-en. Sec. 5841, R.C.M. 1921; Cal. Civ. C. Sec. 204; Field Civ. C. Sec. 95; re-en. Sec. 5841, R.C.M. 1935; R.C.M. 1947, 61-112.

Cross-References

Marriage, Title 40, ch. 1.

Best interest of child, 40-4-212.

Effect of final decree, 40-8-125.

Minors and adults defined, 41-1-101.

Dispositional hearing — abuse, neglect, and dependency, 41-3-406.

Limited emancipation at age 16, 41-3-408.

Guardians of minors, Title 72, ch. 5, part 2.

40-6-235. Parent may relinquish services and custody of child. The parent, whether solvent or insolvent, may relinquish to the child the right of controlling him and receiving his earnings. Abandonment by the parent is presumptive evidence of such relinquishment.

History: En. Sec. 298, Civ. C. 1895; re-en. Sec. 3756, Rev. C. 1907; re-en. Sec. 5848, R.C.M. 1921; Cal. Civ. C. Sec. 211; Field Civ. C. Sec. 102; re-en. Sec. 5848, R.C.M. 1935; R.C.M. 1947, 61-119.

Cross-References

Children born out of wedlock — relinquishment — consent, 40-6-125.

Relinquishment of parental rights, 40-6-135.

Service of summons — how abandonment established, 41-5-503.

Endangering the welfare of children, 45-5-622.

40-6-236. Wages of minors. The wages of a minor employed in service may be paid him until the parent or guardian entitled thereto gives the employer notice that he claims such wages.

History: En. Sec. 299, Civ. C. 1895; re-en. Sec. 3757, Rev. C. 1907; re-en. Sec. 5849, R.C.M. 1921; Cal. Civ. C. Sec. 212; Based on Field Civ. C. Sec. 103; re-en. Sec. 5849, R.C.M. 1935; R.C.M. 1947, 61-120.

Cross-References

Payment of wages generally, 39-3-204.

Child labor, Title 41, ch. 2, part 1.

40-6-237. Destruction of property by minor — liability of parents. Any municipal corporation, county, city, town, school district, or department of the state of Montana, any person, or any religious organization whether incorporated or unincorporated is entitled to recover damages in a civil action in an amount not to exceed $2,500 in a court of competent jurisdiction from the parents of any person under the age of 18 years, living with the parents, who shall maliciously or willfully destroy property, real, personal, or mixed, belonging to such municipal corporation, county, city, town, school district, department of the state of Montana, person, or religious organization.

History: En. Sec. 1, Ch. 195, L. 1957; amd. Sec. 1, Ch. 227, L. 1977; R.C.M. 1947, 61-112.1; amd. Sec. 1, Ch. 560, L. 1981.

Cross-References

Duties and sanctions — suspension and expulsion of pupils, 20-5-201.

Youth Court Act — purpose, 41-5-102.

Criminal mischief, 45-6-101.

Application of minors for drivers' licenses, 61-5-108.

40-6-238. Limitation on amount of recovery. The recovery shall be limited to the actual damages in an amount not to exceed $2,500 in addition to taxable court costs and a reasonable attorney's fee to be set by the court not to exceed $100. The right to recover attorney fees as provided by this section is limited to a person bringing an action under 40-6-237.

History: En. Sec. 2, Ch. 195, L. 1957; amd. Sec. 1, Ch. 178, L. 1971; amd. Sec. 2, Ch. 227, L. 1977; R.C.M. 1947, 61-112.2; amd. Sec. 2, Ch. 560, L. 1981.

Cross-References

Duties and sanctions — suspension and expulsion of pupils, 20-5-201.

Attorneys' fees, Title 25, ch. 10, part 3.

Right to compensatory damages, 27-1-202.

Damages to be reasonable, 27-1-302.

Part 3

Obligations of Children

40-6-301. Duty of child to support indigent parents. (1) It is the duty of every adult child, having the financial ability, to furnish and provide necessary food, clothing, shelter, medical attendance, and burial, entombment, or cremation costs for an indigent parent, unless, in the judgment of the court or jury, the child is excused by reason of intemperance, indolence, immorality, or profligacy of the parent.

(2) If a county pays for burial, entombment, or cremation costs under 53-2-804, the county may seek reimbursement under this part, if applicable.

History: En. Sec. 1, Ch. 42, L. 1915; re-en. Sec. 5853, R.C.M. 1921; re-en. Sec. 5853, R.C.M. 1935; R.C.M. 1947, 61-124; amd. Sec. 1, Ch. 435, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 435 in (1), near beginning before "ability", inserted "financial" and after "attendance" inserted "and burial, entombment, or cremation costs"; inserted (2) allowing the county or Department to seek reimbursement for burial, entombment, or cremation costs; and made minor changes in style.

Code Commissioner Correction: In (2) the Code Commissioner deleted references to the Department of Social and Rehabilitation Services and substituted "53-2-804" for "53-3-110". Section 53-3-110 was repealed by Ch. 561, L. 1993. Indigent burial responsibility of the Department was removed by Ch. 561, L. 1993, and county authority was enacted in sec. 24, Ch. 561, L. 1993. The authority for the Code Commissioner to make the correction was contained in sec. 84, Ch. 10, L. 1993.

Cross-References

Reciprocal duties of parents and children in maintaining each other, 40-6-214.

Minor cannot disaffirm contract for necessaries, 41-1-305.

40-6-302. Failure to support — misdemeanor. Any person violating the provisions of 40-6-301 shall be deemed guilty of a misdemeanor.

History: En. Sec. 2, Ch. 42, L. 1915; re-en. Sec. 5854, R.C.M. 1921; re-en. Sec. 5854, R.C.M. 1935; R.C.M. 1947, 61-125.

Cross-References

Reciprocal duties of parents and children in maintaining each other, 40-6-214.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Nonsupport, 45-5-621.

40-6-303. Civil action to enforce duty to support. A civil suit may be instituted and maintained for the enforcement of the provisions of 40-6-301 by any such child, where there is more than one adult child, or by the parent to whom such support is due or by the county attorney, and in case there is more than one such child, the court or the jury upon the hearing is authorized and empowered to apportion the expenses of such support between the adult children, and the court shall enter judgment in accordance with such finding and apportionment; provided, that such civil action shall not be construed as barring the arrest and conviction of such person for misdemeanor.

History: En. Sec. 3, Ch. 42, L. 1915; re-en. Sec. 5855, R.C.M. 1921; re-en. Sec. 5855, R.C.M. 1935; R.C.M. 1947, 61-126.

Cross-References

Reciprocal duties of parents and children in maintaining each other, 40-6-214.

CHAPTER 7

UNIFORM CHILD CUSTODY JURISDICTION ACT

Part 1 — Uniform Child Custody Jurisdiction Act

40-7-101. Short title.
40-7-102. Purpose — construction.
40-7-103. Definitions.
40-7-104. Jurisdiction.
40-7-105. Notice and opportunity to be heard.
40-7-106. Notice to persons outside this state — submission to jurisdiction.
40-7-107. Simultaneous proceedings in other states.
40-7-108. Inconvenient forum.
40-7-109. Jurisdiction declined by reason of conduct.
40-7-110. Information under oath to be submitted to the court.
40-7-111. Additional parties.
40-7-112. Appearance of parties and child.
40-7-113. Legal effect of custody decree.
40-7-114. Recognition of out-of-state custody decrees.
40-7-115. Modification of custody decree of another state.
40-7-116. Filing and enforcement of custody decree of another state.
40-7-117. Registry of out-of-state custody decrees and proceedings.
40-7-118. Certified copies of custody decree.
40-7-119. Taking testimony in another state.
40-7-120. Hearings and studies in another state — orders to appear.
40-7-121. Assistance to courts of other states.
40-7-122. Preservation of documents for use in other states.
40-7-123. Request for court records of another state.
40-7-124. International application.
40-7-125. Priority.

Part 1
Uniform Child Custody Jurisdiction Act

Part Cross-References
Custody jurisdiction, 40-4-211.
Custodial interference, 45-5-304.

40-7-101. Short title. This chapter may be cited as the "Uniform Child Custody Jurisdiction Act".

History: En. 61-401 by Sec. 1, Ch. 537, L. 1977; R.C.M. 1947, 61-401.

40-7-102. Purpose — construction. (1) The general purposes of this chapter are to:

(a) avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;

(b) promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child;

(c) assure that litigation concerning the custody of a child takes place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available and that courts of this state decline the exercise of jurisdiction when the child and his family have a closer connection with another state;

(d) discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;

(e) deter abductions and other unilateral removals of children undertaken to obtain custody awards;

(f) avoid relitigation of custody decisions of other states in this state insofar as feasible;

(g) facilitate the enforcement of custody decrees of other states;

(h) promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child; and

(i) make uniform the law of those states which enact it.

(2) This chapter shall be construed to promote the general purposes stated in this section.

History: En. 61-402 by Sec. 2, Ch. 537, L. 1977; R.C.M. 1947, 61-402.

Cross-References

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

Custodial interference, 45-5-304.

40-7-103. Definitions. As used in this chapter, the following definitions apply:

(1) “Contestant” means a person, including a parent, who claims a right to custody or visitation rights with respect to a child.

(2) “Custody determination” means a court decision and court orders and instructions providing for the custody of a child, including visitation rights. It does not include a decision relating to child support or any other monetary obligation of any person.

(3) “Custody proceeding” includes proceedings in which a custody determination is one of several issues, such as an action for divorce or separation, and includes issues of custody in adoption proceedings. A “custody proceeding” is not a proceeding pursuant to Title 41, chapter 3 or 5.

(4) “Decree” or “custody decree” means a custody determination contained in a judicial decree or order made in a custody proceeding and includes an initial decree and a modification decree.

(5) “Home state” means the state in which the child, immediately preceding the time involved, lived with his parents, a parent, or a person acting as parent, for at least 6 consecutive months and in the case of a child less than 6 months old the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the 6-month or other period.

(6) “Initial decree” means the first custody decree concerning a particular child.

(7) “Modification decree” means a custody decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court.

(8) “Physical custody” means actual possession and control of a child.

(9) "Person acting as parent" means a person other than a parent who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody.

(10) "State" means any state, territory, or possession of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

History: En. 61-403 by Sec. 3, Ch. 537, L. 1977; R.C.M. 1947, 61-403.

40-7-104. Jurisdiction. The jurisdictional provisions of 40-4-211 apply to this chapter.

History: En. 61-404 by Sec. 4, Ch. 537, L. 1977; R.C.M. 1947, 61-404.

40-7-105. Notice and opportunity to be heard. Before making a decree under this chapter, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. If any of these persons are outside this state, notice and opportunity to be heard shall be given pursuant to 40-7-106.

History: En. 61-405 by Sec. 5, Ch. 537, L. 1977; R.C.M. 1947, 61-405.

Cross-References

Jurisdiction — commencement of proceedings — child custody, 40-4-211.

Modification of custody, 40-4-219.

40-7-106. Notice to persons outside this state — submission to jurisdiction. (1) Notice required for the exercise of jurisdiction over a person outside this state shall be given in a manner reasonably calculated to give actual notice and may be:

(a) by personal delivery outside this state in the manner prescribed for service of process within this state;

(b) in the manner prescribed by the law of the place in which the service is made for service of process in that place in an action in any of its courts of general jurisdiction;

(c) by any form of mail addressed to the person to be served and requesting a receipt; or

(d) as directed by the court, including publication, if other means of notification are ineffective.

(2) Notice under this section shall be served, mailed, or delivered or last published at least 10 days before any hearing in this state.

(3) Proof of service outside this state may be made by affidavit of the individual who made the service or in the manner prescribed by the law of this state, the order pursuant to which the service is made, or the law of the place in which the service is made. If service is made by mail, proof may be a receipt signed by the addressee or other evidence of delivery to the addressee.

(4) Notice is not required if a person submits to the jurisdiction of the court.

History: En. 61-406 by Sec. 6, Ch. 537, L. 1977; R.C.M. 1947, 61-406.

Cross-References

Jurisdiction of persons, Rule 4B, M.R.Civ.P. (see Title 25, ch. 20).

Proof of service, Rule 4D(8), M.R.Civ.P. (see Title 25, ch. 20).

Jurisdiction — commencement of proceedings — child custody, 40-4-211.

40-7-107. Simultaneous proceedings in other states. (1) A court of this state may not exercise its jurisdiction under this chapter if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this chapter unless the proceeding is stayed by the court of the other state because this state is a more appropriate forum or for other reasons.

(2) Before hearing the petition in a custody proceeding, the court shall examine the pleadings and other information supplied by the parties under 40-7-110 and shall consult the child custody registry established under 40-7-117 concerning the pendency of proceedings with respect to the child in other states. If the court has reason to believe that proceedings may be pending in another state, it shall direct an inquiry to the state court administrator or other appropriate official of the other state.

(3) If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed jurisdiction, it shall stay the proceeding and communicate with the court in which the other proceeding is pending to the end that the issue may be litigated in the more appropriate forum and that information be exchanged in accordance with 40-7-120 through 40-7-123. If a court of this state has made a custody decree before being informed of a pending proceeding in a court of another state, it shall immediately inform that court of the fact. If the court is informed that a proceeding was commenced in another state after it assumed jurisdiction, it shall likewise inform the other court to the end that the issues may be litigated in the more appropriate forum.

History: En. 61-407 by Sec. 7, Ch. 537, L. 1977; R.C.M. 1947, 61-407.

Cross-References

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

Jurisdiction — commencement of proceedings, 40-4-211.

40-7-108. Inconvenient forum. (1) A court which has jurisdiction under this chapter to make an initial or modification decree may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

(2) A finding of inconvenient forum may be made upon the court's own motion or upon motion of a party or a guardian ad litem or other representative of the child.

(3) In determining if it is an inconvenient forum, the court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose it may take into account the following factors, among others:

(a) if another state is or recently was the child's home state;

(b) if another state has a closer connection with the child and his family or with the child and one or more of the contestants;

(c) if substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another state;

(d) if the parties have agreed on another forum which is no less appropriate; and

(e) if the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in 40-7-102.

(4) Before determining whether to decline or retain jurisdiction, the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to the parties.

(5) If the court finds that it is an inconvenient forum and that a court of another state is a more appropriate forum, it may dismiss the proceedings or it may stay the proceedings upon condition that a custody proceeding be promptly commenced in another named state or upon any other conditions which may be just and proper, including the condition that a moving party stipulate his consent and submission to the jurisdiction of the other forum.

(6) The court may decline to exercise its jurisdiction under this chapter if a custody determination is incidental to an action for divorce or another proceeding while retaining jurisdiction over the divorce or other proceeding.

(7) If it appears to the court that it is clearly an inappropriate forum, it may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings in this state, necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.

(8) Upon dismissal or stay of proceedings under this section the court shall inform the court found to be the more appropriate forum of this fact or, if the court which would have jurisdiction in the other state is not certainly known, transmit the information to the court administrator or other appropriate official for forwarding to the appropriate court.

(9) Any communication received from another state informing this state of a finding of inconvenient forum because a court of this state is the more appropriate forum shall be filed in the custody registry of the appropriate court. Upon assuming jurisdiction, the court of this state shall inform the original court of this fact.

History: En. 61-408 by Sec. 8, Ch. 537, L. 1977; R.C.M. 1947, 61-408.

Cross-References

Change of venue, Title 25, ch. 2, part 2.
Allowable costs, Title 25, ch. 10, part 2.
Attorneys' fees, Title 25, ch. 10, part 3.
Effect of other judicial orders — when disputable presumption created, 26-3-202.
Hearings in custody proceedings, 40-4-216.

40-7-109. Jurisdiction declined by reason of conduct. (1) If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct, the court may decline to exercise jurisdiction if this is just and proper under the circumstances.

(2) Unless required in the interest of the child, the court may not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state, the court may decline to exercise its jurisdiction if this is just and proper under the circumstances.

(3) In appropriate cases a court dismissing a petition under this section may charge the petitioner with necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses.

History: En. 61-409 by Sec. 9, Ch. 537, L. 1977; R.C.M. 1947, 61-409.

Cross-References

Costs, Title 25, ch. 10, parts 1 and 2.

Attorneys' fees, Title 25, ch. 10, part 3.

Best interests of child, 40-4-212, 40-6-130.

Custody modification, 40-4-219.

Custodial interference, 45-5-304.

40-7-110. Information under oath to be submitted to the court. (1) Each party in a custody proceeding in his first pleading or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last 5 years, and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit each party shall further declare under oath whether:

(a) he has participated (as a party, witness, or in any other capacity) in any other litigation concerning the custody of the same child in this or any other state;

(b) he has information of any custody proceeding concerning the child pending in a court of this or any other state; and

(c) he knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

(2) If the declaration as to any of the above items is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the court's jurisdiction and the disposition of the case.

(3) Each party has a continuing duty to inform the court of any custody proceeding concerning the child in this or any other state of which he obtained information during this proceeding.

History: En. 61-410 by Sec. 10, Ch. 537, L. 1977; R.C.M. 1947, 61-410.

Cross-References

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

Jurisdiction — commencement of custody proceedings, 40-4-211.

Affidavit practice, 40-4-220.

40-7-111. Additional parties. If the court learns from information furnished by the parties pursuant to 40-7-110 or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child, it shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of his joinder as a party. If the person joined as a party is outside this state, he shall be served with process or otherwise notified in accordance with 40-7-106.

History: En. 61-411 by Sec. 11, Ch. 537, L. 1977; R.C.M. 1947, 61-411.

Cross-References

Joinder of persons needed for just adjudication, Rule 19, M.R.Civ.P. (see Title 25, ch. 20).

40-7-112. Appearance of parties and child. (1) The court may order any party to the proceeding who is in this state to appear personally before the court. If that party has physical custody of the child, the court may order that he appear personally with the child.

(2) If a party to the proceeding whose presence is desired by the court is outside this state with or without the child, the court may order that the notice given under 40-7-106 include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to that party.

(3) If a party to the proceeding who is outside this state is directed to appear under subsection (2) or desires to appear personally before the court with or without the child, the court may require another party to pay to the clerk of the court travel and other necessary expenses of the party so appearing and of the child, if this is just and proper under the circumstances.

History: En. 61-412 by Sec. 12, Ch. 537, L. 1977; R.C.M. 1947, 61-412.

Cross-References

Hearings, custody proceedings, 40-4-216.

40-7-113. Legal effect of custody decree. A custody decree rendered by a court of this state which had jurisdiction under 40-7-104 binds all parties who have been served in this state or notified in accordance with 40-7-106 or who have submitted to the jurisdiction of the court and who have been given an opportunity to be heard. As to these parties the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of this chapter.

History: En. 61-413 by Sec. 13, Ch. 537, L. 1977; R.C.M. 1947, 61-413.

Cross-References

Decree of dissolution of marriage, 40-4-108.

Separation agreement, 40-4-201.

Modification of custody, 40-4-219.

40-7-114. Recognition of out-of-state custody decrees. The courts of this state shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with this chapter or which was made under factual circumstances meeting the jurisdictional standards of the chapter, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those of this chapter.

History: En. 61-414 by Sec. 14, Ch. 537, L. 1977; R.C.M. 1947, 61-414.

Cross-References

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

40-7-115. Modification of custody decree of another state. (1) If a court of another state has made a custody decree, a court of this state may not modify that decree unless it appears to the court of this state that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this chapter or has declined to assume jurisdiction to modify the decree and the court of this state has jurisdiction.

(2) If a court of this state is authorized under subsection (1) and 40-7-109 to modify a custody decree of another state, it shall give due consideration to

the transcript of the record and other documents of all previous proceedings submitted to it in accordance with 40-7-123.

History: En. 61-415 by Sec. 15, Ch. 537, L. 1977; R.C.M. 1947, 61-415.

Cross-References

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

Modification of custody, 40-4-219.

40-7-116. Filing and enforcement of custody decree of another state. (1) A certified copy of a custody decree of another state may be filed in the office of the clerk of any district court of this state. The clerk shall treat the decree in the same manner as a custody decree of the district court of this state. A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by a court of this state.

(2) A person violating a custody decree of another state which makes it necessary to enforce the decree in this state may be required to pay necessary travel and other expenses, including attorneys' fees, incurred by the party entitled to the custody or his witnesses.

History: En. 61-416 by Sec. 16, Ch. 537, L. 1977; R.C.M. 1947, 61-416.

Cross-References

General duties of Clerk of the District Court, 3-5-501.

Effect of judicial record of another state, 26-3-203.

Judicial supervision, 40-4-218.

40-7-117. Registry of out-of-state custody decrees and proceedings. The clerk of each district court shall maintain a registry in which he shall enter the following:

(1) certified copies of custody decrees of other states received for filing;

(2) communications as to the pendency of custody proceedings in other states;

(3) communications concerning a finding of inconvenient forum by a court of another state; and

(4) other communications or documents concerning custody proceedings in another state which may affect the jurisdiction of a court of this state or the disposition to be made by it in a custody proceeding.

History: En. 61-417 by Sec. 17, Ch. 537, L. 1977; R.C.M. 1947, 61-417.

Cross-References

General duties of Clerk of the District Court, 3-5-501.

Register of actions, 3-5-504.

40-7-118. Certified copies of custody decree. The clerk of the district court of this state, at the request of the court of another state or at the request of any person who is affected by or has a legitimate interest in a custody decree, shall certify and forward a copy of the decree to that court or person.

History: En. 61-418 by Sec. 18, Ch. 537, L. 1977; R.C.M. 1947, 61-418.

Cross-References

General duties of Clerk of the District Court, 3-5-501.

40-7-119. Taking testimony in another state. In addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses, including parties and the child, by deposition or otherwise, in another state. The court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony shall be taken.

History: En. 61-419 by Sec. 19, Ch. 537, L. 1977; R.C.M. 1947, 61-419.

Cross-References

Depositions, Rules 26 through 31, M.R.Civ.P. (see Title 25, ch. 20).

Powers and duties of guardian of minor, 72-5-231.

40-7-120. Hearings and studies in another state — orders to appear. (1) A court of this state may request the appropriate court of another state to hold a hearing to adduce evidence, to order a party to produce or give evidence under other procedures of that state, or to have social studies made with respect to the custody of a child involved in proceedings pending in the court of this state; and to forward to the court of this state certified copies of the transcript of the record of the hearing, the evidence otherwise adduced, or any social studies prepared in compliance with the request. The cost of the services may be assessed against the parties or, if necessary, ordered paid by the state.

(2) A court of this state may request the appropriate court of another state to order a party to custody proceedings pending in the court of this state to appear in the proceedings and, if that party has physical custody of the child, to appear with the child. The request may state that travel and other necessary expenses of the party and of the child whose appearance is desired will be assessed against another party or will otherwise be paid.

History: En. 61-420 by Sec. 20, Ch. 537, L. 1977; R.C.M. 1947, 61-420.

Cross-References

Costs, Title 25, ch. 10.

Effect of judicial record of another state, 26-3-203.

Investigations and reports, 40-4-215.

Hearings, 40-4-216.

40-7-121. Assistance to courts of other states. (1) Upon request of the court of another state the courts of this state which are competent to hear custody matters may order a person in this state to appear at a hearing to adduce evidence or to produce or give evidence under other procedures available in this state or may order social studies to be made for use in a custody proceeding in another state. A certified copy of the transcript of the record of the hearing or the evidence otherwise adduced and any social studies prepared shall be forwarded by the clerk of the court to the requesting court.

(2) A person within this state may voluntarily give his testimony or statement in this state for use in a custody proceeding outside this state.

(3) Upon request of the court of another state a competent court of this state may order a person in this state to appear alone or with the child in a custody proceeding in another state. The court may condition compliance with the request upon assurance by the other state that state travel and other necessary expenses will be advanced or reimbursed.

History: En. 61-421 by Sec. 21, Ch. 537, L. 1977; R.C.M. 1947, 61-421.

Cross-References

Copies of proceedings, 3-5-604.

Costs, Title 25, ch. 10.

Depositions, Rules 26 through 31, M.R.Civ.P. (see Title 25, ch. 20).

Investigations and reports, 40-4-215.

40-7-122. Preservation of documents for use in other states. In any custody proceeding in this state the court shall preserve the pleadings, orders and decrees, any record that has been made of its hearings, social studies, and other pertinent documents until the child reaches 18 years of age. Upon appropriate request of the court of another state, the court shall forward to the other court certified copies of any or all of such documents.

History: En. 61-422 by Sec. 22, Ch. 537, L. 1977; R.C.M. 1947, 61-422.

Cross-References

Copies of proceedings, 3-5-604.

Investigations and reports, 40-4-215.

Affidavit practice, 40-4-220.

40-7-123. Request for court records of another state. If a custody decree has been rendered in another state concerning a child involved in a custody proceeding pending in a court of this state, the court of this state upon taking jurisdiction of the case shall request of the court of the other state a certified copy of the transcript of any court record and other documents mentioned in 40-7-122.

History: En. 61-423 by Sec. 23, Ch. 537, L. 1977; R.C.M. 1947, 61-423.

Cross-References

Copies of proceedings, 3-5-604.

Effect of judicial record of another state, 26-3-203.

40-7-124. International application. The general policies of this chapter extend to the international area. The provisions of this chapter relating to the recognition and enforcement of custody decrees of other states apply to custody decrees and decrees involving legal institutions similar in nature to custody institutions rendered by appropriate authorities of other nations if reasonable notice and opportunity to be heard have been given to all affected persons.

History: En. 61-424 by Sec. 24, Ch. 537, L. 1977; R.C.M. 1947, 61-424.

Cross-References

Effect of judgments of other foreign tribunals, 26-3-205.

40-7-125. Priority. A custody proceeding which raises a question of existence or exercise of jurisdiction under this chapter shall be given calendar priority and handled expeditiously.

History: En. 61-425 by Sec. 25, Ch. 537, L. 1977; R.C.M. 1947, 61-425.

Cross-References

Custody hearings to receive priority, 40-4-216.

CHAPTER 8

ADOPTION

Part 1 — Adoption of Children

40-8-101. Short title.
40-8-102. Uniformity of interpretation.
40-8-103. Definitions.
40-8-104. Who may be adopted.
40-8-105. Minor parent.
40-8-106. Who may adopt.
40-8-107. Venue.
40-8-108. Who may place a child for adoption.
40-8-109. Placement for adoption by parent — adoption by nonrelative — requirements before relinquishment of parental rights.
40-8-110. Adoption services account.
40-8-111. Consent required for adoption.
40-8-112. Withdrawal of consent.
40-8-113. Consent of child.
40-8-114. Adoption policy — best interest of child standard — factors to be considered.
40-8-115. Placement for adoption by parent — adoption by nonrelative — preplacement investigation or home study required of prospective adoptive parent.
40-8-116. Placement for adoption by parent — adoption by nonrelative — birth mother counseling required.
40-8-117. Placement for adoption by parent — adoption by relative — requirements.
40-8-118 through 40-8-120 reserved.
40-8-121. Petition for adoption.
40-8-122. Investigation.
40-8-123. Summary decree.
40-8-124. Interlocutory and final decree.
40-8-125. Effect of final decree.
40-8-126. Confidentiality of record and proceedings.
40-8-127. Appeal.
40-8-128. Foreign adoption decrees.
40-8-129 through 40-8-134 reserved.
40-8-135. Placement for adoption by parent — adoption by nonrelative — fees — violation — penalty.
40-8-136. Placement for adoption by parent — adoption by nonrelative — report of agreements and disbursements.

Part 2 — Adoption of Adults

40-8-201. Adoption of adult.
40-8-202. Procedure.

Part 1

Adoption of Children

Part Cross-References

Adoption records not open to public inspection, 2-6-104 (see 40-8-126).

When court proceeding may be private, 3-1-313.

Certificates of adoption or annulment of adoption, 50-15-303.

Substitute birth certificate for person adopted, 50-15-304.

Child adoption agencies, Title 52, ch. 2, part 4.

Subsidized adoption, Title 52, ch. 2, part 5.

40-8-101. Short title. This part may be cited as the "Uniform Adoption Act", as amended.

History: En. Sec. 17, Ch. 240, L. 1957; R.C.M. 1947, 61-217; amd. Sec. 5, Ch. 530, L. 1981.

40-8-102. Uniformity of interpretation. This part shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 16, Ch. 240, L. 1957; R.C.M. 1947, 61-216.

40-8-103. Definitions. As used in this chapter, unless the context otherwise requires the following definitions apply:

(1) "Adoption" means the act of creating the legal relationship between parent and child when it does not exist genetically.

(2) "Adoptive parent" means an adult who has become the mother or father of a child through the legal process of adoption.

(3) "Agency" means a public or voluntary agency licensed by any jurisdiction within the United States and expressly empowered to place children as a preliminary to a possible adoption.

(4) "Birth parent" means the mother or father of genetic origin of a child but does not include a putative father of a child.

(5) "Child" means any person under 18 years of age.

(6) "Court" means a Montana district court or a tribal court of any Montana Indian reservation.

(7) "Department" means the department of family services, as established and provided for in 2-15-2401.

(8) "Extended family member" means an adult who is the child's grandparent, aunt or uncle, or brother or sister.

(9) "Home study" means the process of assisting the prospective adoptive parent or family to assess its own readiness to adopt and a determination by the department or a licensed child-placing agency of the compliance of the parent or family and its residence with applicable standards.

(10) "Parent" means the birth or adoptive mother or the birth, adoptive, or legal father whose parental rights have not been terminated.

(11) "Placement for adoption" means the transfer of physical custody of a child with respect to whom all parental rights have been terminated and who is otherwise legally free for adoption to a person who intends to adopt the child.

(12) "Relinquishment" means the informed and voluntary release in writing of all parental rights with respect to a child by a parent to an agency or individual pursuant to 40-6-135, 40-8-109, or 40-8-117, whichever is applicable.

History: En. Sec. 1, Ch. 240, L. 1957; R.C.M. 1947, 61-201; amd. Sec. 6, Ch. 530, L. 1981; amd. Sec. 3, Ch. 1, Sp. L. 1981; amd. Sec. 34, Ch. 609, L. 1987; amd. Sec. 7, Ch. 684, L. 1991.

Cross-References

Special proceedings, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

Minors and adults defined, 41-1-101.

40-8-104. Who may be adopted. (1) Any minor may be adopted if:

(a) the minor has no living parent; or

(b) the parental rights of the living parents of the minor have been terminated according to the laws of this state or of another jurisdiction; or

(c) the living parents consent to the adoption.

(2) An adult may be adopted as provided in part 2 of this chapter.

History: **En. Sec. 2, Ch. 240, L. 1957; R.C.M. 1947, 61-202; amd. Sec. 7, Ch. 530, L. 1981.**

Cross-References

Adoption of adults, Title 40, ch. 8, part 2.

Hard-to-place child, 52-2-503.

40-8-105. Minor parent. A parent who is a minor shall have the right to relinquish his or her child for adoption, and such relinquishment shall not be subject to revocation by reason of such minority.

History: **En. 61-218 by Sec. 6, Ch. 199, L. 1961; R.C.M. 1947, 61-218.**

Cross-References

Children born out of wedlock — relinquishment — consent, 40-6-125.

Proceeding to determine father's identity and terminate rights, 40-6-128.

Relinquishment of parental rights, 40-6-135.

Minors and adults defined, 41-1-101.

40-8-106. Who may adopt. The following persons are eligible to adopt a child:

(1) a husband and wife jointly or either the husband or wife if the other spouse is a parent of the child;

(2) an unmarried person who is at least 18 years old;

(3) a married person at least 18 years old who is legally separated from the other spouse;

(4) in the case of an illegitimate child, its unmarried father or mother.

History: **En. Sec. 3, Ch. 240, L. 1957; amd. Sec. 15, Ch. 240, L. 1971; amd. Sec. 22, Ch. 94, L. 1973; R.C.M. 1947, 61-203.**

Cross-References

Husband and wife, Title 40, ch. 2.

Legal separation, 40-4-104.

Best interest of the child — custody to father — legitimation, 40-6-130.

Minors and adults defined, 41-1-101.

Child adoption agencies, Title 52, ch. 2, part 4.

Eligibility for subsidy, 52-2-507.

40-8-107. Venue. Proceedings for adoption must be brought in the district court of the county where the petitioners reside.

History: **En. Sec. 4, Ch. 240, L. 1957; R.C.M. 1947, 61-204.**

Cross-References

Residence — rules for determining, 1-1-215.

Venue, Title 25, ch.2.

40-8-108. Who may place a child for adoption. A child may be placed for adoption only by:

(1) the department;

(2) a licensed child-placing agency; or

(3) the child's parents.

History: **En. Sec. 10, Ch. 530, L. 1981.**

40-8-109. Placement for adoption by parent — adoption by nonrelative — requirements before relinquishment of parental rights. (1) A parent who proposes to place a child for adoption with an individual who is not the child's stepparent or a member of the child's extended family shall file with the district court for the county in which the prospective adoptive parent or the parent making the placement resides:

(a) a notice of parental placement;

(b) a relinquishment of parental rights to the prospective adoptive parents, executed voluntarily and in accordance with subsection (8); and

(c) the report of agreements and disbursements required under 40-8-136.

(2) (a) The notice of parental placement must be signed by the parent making the placement and must contain the following information:

(i) the name and address of each birth parent, if known, and if unknown, the steps taken to ascertain the whereabouts of the parent or parents;

(ii) the name and address of each prospective adoptive parent;

(iii) the name and address or expected date and place of birth of the child; and

(iv) the name and address of counsel, guardian ad litem, or other representative, if any, for each of the parties listed in subsections (2)(a)(i) through (2)(a)(iii).

(b) The district court shall provide a copy of the notice to the parent making the placement.

(3) Upon receipt of a notice of parental placement, the court shall require the department to conduct an investigation and report to the court within 30 days but not earlier than 72 hours after the birth of the child. The report must state whether counseling for the birth parents is required and whether the following requirements for placement have been met:

(a) that the decision to place was voluntarily made by the birth parents;

(b) that the department has no temporary authority to investigate or provide protective services to the family under 41-3-402;

(c) that the birth parents, prospective adoptive parents, and their representatives have provided the court with the report required by 40-8-136;

(d) that the prospective adoptive parents have been provided a medical and social history of the child and birth parents;

(e) that the requirements of 40-8-115 and 40-8-116 have been met; and

(f) that the proposed placement is in the child's best interest.

(4) The department may contract with licensed social workers and licensed child-placing agencies to conduct the investigations and prepare the report to the court ordered pursuant to subsection (3).

(5) The department may charge the prospective adoptive parents a fee, commensurate with costs, for the investigation and report.

(6) Within 45 days of filing of the notice of parental placement and the report required by 40-8-136, the court shall schedule a hearing to consider the proposed adoptive placement.

(7) (a) At least 5 days' notice of the time and place of the hearing must be given to the birth parents, the prospective adoptive parents, any named guardian ad litem, and the department.

(b) The hearing is closed to all persons except those persons entitled to notice and their representatives or counsel.

(8) A parent may not execute a relinquishment of parental rights to an individual who is not the child's stepparent or a member of the child's extended family until the following criteria have been met:

(a) not less than 72 hours have elapsed since the birth of the child, if the person relinquishing parental rights is the child's birth mother;

(b) the investigation or home study required by 40-8-115 has been performed; and

(c) the parent has received counseling in accordance with 40-8-116.

(9) If the court finds that all requirements for adoptive placement have been met, the court may issue an order or schedule a hearing for the purpose of terminating parental rights and granting temporary custody to the prospective adoptive parents or it may issue a final decree if a petition for adoption has been filed under 40-8-121. The prospective adoptive parents shall file their petition to adopt within 30 days of the order.

(10) If the court finds that all requirements for the adoptive placement have not been met, the court may issue any order appropriate to protect the child, including granting temporary custody to the prospective adoptive parents or issuing a final decree if a petition for adoption has been filed under 40-8-121.

(11) The court shall send a copy of the final determination made by the court under this section to the central office of the department.

History: En. Sec. 11, Ch. 530, L. 1981; amd. Sec. 4, Ch. 1, Sp. L. 1981; amd. Sec. 1, Ch. 277, L. 1987; amd. Sec. 3, Ch. 18, L. 1989; amd. Sec. 1, Ch. 539, L. 1989; amd. Sec. 3, Ch. 683, L. 1991; amd. Sec. 1, Ch. 684, L. 1991.

40-8-110. Adoption services account. There is an adoption services account in the special revenue fund. The fees collected by the department of family services under 40-8-109 must be deposited into this account and may be used by the department for adoption service.

History: En. Sec. 2, Ch. 539, L. 1989.

Cross-References

State treasury fund structure, 17-2-102.

40-8-111. Consent required for adoption. (1) An adoption of a child may be decreed when there have been filed written consents to adoption executed by:

(a) both parents, if living, or the surviving parent of a child, provided that consent is not required from a father or mother:

(i) adjudged guilty by a court of competent jurisdiction of assault on the child, as provided in 45-5-201; endangering the welfare of children, concerning the child, as provided in 45-5-622; or sexual abuse of children, toward the child, as provided in 45-5-625;

(ii) who has been judicially deprived of the custody of the child on account of cruelty or neglect toward the child;

(iii) who has, in the state of Montana or in any other state of the United States, willfully abandoned the child, as defined in 41-3-102(8)(d);

(iv) who has caused the child to be maintained by any public or private children's institution, charitable agency, or any licensed adoption agency or the department of family services of the state of Montana for a period of 1 year without contributing to the support of the child during said period, if able;

(v) if it is proven to the satisfaction of the court that the father or mother, if able, has not contributed to the support of the child during a period of 1 year before the filing of a petition for adoption; or

(vi) whose parental rights have been judicially terminated;

(b) the legal guardian of the child if both parents are dead or if the rights of the parents have been terminated by judicial proceedings and such guardian has authority by order of the court appointing him to consent to the adoption;

(c) the executive head of an agency if the child has been relinquished for adoption to such agency or if the rights of the parents have been judicially terminated or if both parents are dead and custody of the child has been legally vested in such agency with authority to consent to adoption of the child; or

(d) any person having legal custody of a child by court order if the parental rights of the parents have been judicially terminated, but in such case the court having jurisdiction of the custody of the child must consent to adoption and a certified copy of its order shall be attached to the petition.

(2) The consents required by subsections (1)(a) and (1)(b) shall be acknowledged before an officer authorized to take acknowledgments or witnessed by a representative of the department of family services or of an agency or witnessed by a representative of the court.

History: En. Sec. 5, Ch. 240, L. 1957; amd. Sec. 2, Ch. 199, L. 1961; amd. Sec. 48, Ch. 121, L. 1974; amd. Sec. 27, Ch. 512, L. 1975; R.C.M. 1947, 61-205; amd. Sec. 6, Ch. 33, L. 1979; amd. Sec. 8, Ch. 530, L. 1981; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 2, Ch. 439, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 439 at end of (1)(a)(iii) substituted reference to 41-3-102(8)(d) for reference to 41-3-102(7)(d).

Cross-References

Taking acknowledgments and affidavits, 3-1-404.

Children born out of wedlock — relinquishment — consent, 40-6-125.

Expected child — intent to release or consent, 40-6-127.

Proceeding to determine father's identity and terminate rights, 40-6-128.

Relinquishment of parental rights, 40-6-135.

Dispositional hearing in abuse and neglect cases, 41-3-406.

Child adoption agencies, Title 52, ch. 2, part 4.

Subsidized adoptions, Title 52, ch. 2, part 5.

Parents liable to Department for Aid to Families With Dependent Children payments, 53-4-248.

Termination of appointment of guardian for a minor, 72-5-233.

40-8-112. Withdrawal of consent. Withdrawal of any consent filed in connection with a petition for adoption hereunder shall not be permitted, except that the court, after notice and opportunity to be heard is given to the petitioner, to the person seeking to withdraw consent, and to any agency participating in the adoption proceedings, may, if it finds that the best interests of the child will be furthered thereby, issue a written order permitting the withdrawal of such consent. The entry of the interlocutory or final decree of adoption renders any consent irrevocable.

History: En. Sec. 6, Ch. 240, L. 1957; R.C.M. 1947, 61-206.

Cross-References

Best interests of child, 40-4-212.

Statute of Limitations — adoption, 40-6-108.

Revocation of releases, 40-6-135.

40-8-113. Consent of child. If a child is 12 years of age or over, he must consent to his adoption. Consent must be given in court or be in writing in such form as the court shall direct.

History: En. Sec. 7, Ch. 240, L. 1957; R.C.M. 1947, 61-207; amd. Sec. 9, Ch. 530, L. 1981.

Cross-References

Enforcement of minor's rights, 41-1-202.

40-8-114. Adoption policy — best interest of child standard — factors to be considered. (1) It is the policy of the state of Montana to ensure that the best interests of the child are met by adoption proceedings.

(2) The primary purpose of adoption is to help a child become a permanent member of a nurturing family that can give him the care, protection, and opportunities essential for his healthy personal growth and development.

(3) The well-being of the adopted child is the main objective in the placement of children for adoption. The needs of the child must be the primary focus of adoption proceedings, with full recognition of the interdependent needs and interests of birth parents and adoptive parents.

(4) All relevant factors must be considered in determining the best interests of the child in an adoption proceeding. Factors relevant to the determination of a prospective adoptive parent's parenting ability, the future security for a child, and familial stability must be considered. In determining the best interests of the child, the following factors with regard to a prospective adoptive parent may be considered:

(a) age, as it relates to health, earning capacity, provisions for the support of a child, or other relevant circumstance;

(b) marital status, as it relates to the ability to serve as a parent in particularized circumstances; and

(c) religion, as it relates to the ability to provide the child with an opportunity for religious or spiritual and ethical development and as it relates to the express preference of a birth parent to have a child placed with or the express preference of a child to be placed with adoptive parents of a particular religious faith or denomination.

(5) For purposes of ensuring that the best interests of the child are met, the department and licensed child-placing agencies are authorized to gather and use, in an appropriate, nonarbitrary manner, information concerning the age, marital status, and religious beliefs of prospective adoptive parents. The authority granted by this subsection includes the authority to receive and to consider, consistent with the best interests of the child, the preferences of birth parents relating to the age, marital status, or religious beliefs of adoptive parents. Consideration of religious factors by a licensed child-placing agency that is affiliated with a particular religious faith is not arbitrary consideration of religion within the meaning of this section.

History: En. Sec. 1, Ch. 682, L. 1991.

40-8-115. Placement for adoption by parent — adoption by nonrelative — preplacement investigation or home study required of prospective adoptive parent. (1) A prospective adoptive parent who wishes to adopt a child under 40-8-109 shall initiate the nonagency adoption process by requesting an investigation or home study by the department or a licensed child-placing agency. During the investigation or home study process, the department or agency shall provide the prospective adoptive parent information regarding the nonagency adoption process and a copy of 40-8-116 and this section.

(2) The prospective adoptive parent and the home of the prospective adoptive parent must be studied and evaluated according to the department's or child-placing agency's standards for placement of a child.

(3) The department or child-placing agency that conducts the investigation or home study shall prepare a written report containing the results of the investigation or home study. The report must be attached to and made a part of the report required by 40-8-109(3).

History: **En. Sec. 2, Ch. 684, L. 1991.**

40-8-116. Placement for adoption by parent — adoption by nonrelative — birth mother counseling required. (1) In an adoption subject to 40-8-109, the department shall determine whether counseling of the birth parents is required.

(2) If required, counseling must be done by a staff person from the department or a licensed child-placing agency designated to provide this type of counseling.

(3) Counseling must consist of:

(a) an explanation and consideration of adoption procedures that are available to birth parents along with the alternative of nonrelinquishment to assist them in determining the best course of action;

(b) detailed information regarding the nonagency adoption process, including reviewing and providing a copy of 40-8-115 and this section; and

(c) a thorough explanation and consideration of the legal and personal impact of terminating parental rights and of adoption.

(4) The counselor shall prepare a written report containing a description of the topics covered and the results of the counseling, including his opinion indicating whether or not the birth parent understood all issues and was capable of informed consent. This report must be completed and filed with the court no later than the date the relinquishment of parental rights is executed.

(5) The counselor's report must be attached to and made a part of the report required by 40-8-109(3).

History: **En. Sec. 3, Ch. 684, L. 1991.**

40-8-117. Placement for adoption by parent — adoption by relative — requirements. A parent may relinquish parental rights for the purposes of adoption of a child to the child's stepparent or a member of the child's extended family. The relinquishment must be executed voluntarily and in accordance with 40-6-135(2) through (4). The relinquishment may be executed at any time, except that a birth mother may not execute a relinquishment before the child is 72 hours old.

History: **En. Sec. 4, Ch. 684, L. 1991.**

40-8-118 through 40-8-120 reserved.

40-8-121. Petition for adoption. (1) A petition for adoption shall be filed in duplicate, verified by the petitioners, and shall specify:

(a) the full names, ages, and place of residence of the petitioners and, if married, the place and date of the marriage;

(b) when the petitioners acquired or intend to acquire custody of the child and from what person or agency;

(c) the date and place of birth of child, if known;

(d) the name used for the child in the proceeding and, if a change in name is desired, the new name;

(e) that it is the desire of the petitioners that the relationship of parent and child be established between them and the child;

(f) a full description and statement of value of all property owned or possessed by the child;

(g) facts, if any, which excuse consent on the part of a parent to the adoption.

(2) One copy of the petition shall be retained by the court. The other shall be sent to the department of family services or to the child-placing agency participating in the adoption proceeding.

(3) Any written consent required by this part may be attached to the petition or may be filed after the filing of the petition, with the consent of the court.

History: En. Sec. 8, Ch. 240, L. 1957; amd. Sec. 48, Ch. 121, L. 1974; amd. Sec. 18, Ch. 33, L. 1977; R.C.M. 1947, 61-208; amd. Sec. 12, Ch. 530, L. 1981; amd. Sec. 2, Ch. 277, L. 1987; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 1, Ch. 233, L. 1989.

Cross-References

Petition for change of name of natural person, 27-31-101.

Procedure in adult adoption, 40-8-202.

Child adoption agencies, Title 52, ch. 2, part 4.

40-8-122. Investigation. (1) Upon the filing of a petition for adoption, the court shall order an investigation to be made by the department or by a licensed child-placing agency or other person named by the court, unless an investigation has been made prior to the filing as provided in subsection (4). The investigation may be waived by the court or the department if the petitioner is a stepparent of the child or if one of the petitioners is a member of the child's extended family. The report of investigation shall be filed with the court by the investigator at the time the petition is filed or within 30 days from the issuance of the order for investigation, unless time therefor is extended by the court. The report of the investigation shall state:

(a) whether the child is legally free for adoption;

(b) whether the proposed home is a suitable one for the child;

(c) that medical and social histories have been provided to the adoptive parent; and

(d) any other circumstances and conditions which may have a bearing on the adoption and of which the court should have knowledge.

(2) The court may order agencies named in subsection (1) located in one or more counties to make separate investigations on separate parts of the inquiry as may be appropriate.

(3) The report of the investigation shall become a part of the files in the case and shall contain a definite recommendation stating the reasons for or against the proposed adoption.

(4) (a) If an investigation has been made within the 6 months immediately preceding the filing of the petition, the court does not have to order a new investigation to be made.

(b) The report of the earlier investigation must contain the information and recommendation specified by subsections (1) and (3) and be filed with the petition for adoption.

History: En. Sec. 9, Ch. 240, L. 1957; amd. Sec. 48, Ch. 121, L. 1974; amd. Sec. 2, Ch. 495, L. 1975; R.C.M. 1947, 61-209; amd. Sec. 13, Ch. 530, L. 1981; amd. Sec. 3, Ch. 277, L. 1987; amd. Sec. 1, Ch. 406, L. 1987.

Cross-References

Child adoption agencies, Title 52, ch. 2, part 4.

Records to be confidential, 52-2-505.

Certification as hard to place, 52-2-506.

40-8-123. Summary decree. (1) If the child is a member of the extended family of one of the petitioners or is a stepchild of the petitioner or the court finds that the best interests of the child will be furthered thereby, the court in its discretion, after examination of a report ordered or received pursuant to 40-8-122, may waive the entry of an interlocutory decree and the waiting period of 6 months provided in 40-8-124 and grant a final decree of adoption if satisfied that the adoption is in the best interests of the child.

(2) The department or the child-placing agency may recommend in the investigation report filed with the petition for adoption that the court issue a summary decree as provided for in subsection (1) if:

(a) a period of 6 months has elapsed since the department or licensed child-placing agency placed the child for adoption; and

(b) the department or licensed child-placing agency conducted an investigation during that period.

History: En. Sec. 10, Ch. 240, L. 1957; amd. Sec. 3, Ch. 199, L. 1961; R.C.M. 1947, 61-210; amd. Sec. 14, Ch. 530, L. 1981; amd. Sec. 4, Ch. 277, L. 1987.

Cross-References

Best interests of child, 40-4-212, 40-6-130.

40-8-124. Interlocutory and final decree. (1) Upon examination of the report described in 40-8-122, if such report has been considered necessary by the court, and after hearing, the court may issue an interlocutory decree giving the care and custody to the petitioners pending the further order of the court.

(2) When a petition has been filed seeking the adoption of a child, the court must cause service of process to be made on the parent or parents of the child, except in those cases hereinafter provided, in the following manner:

(a) The court shall order a citation to issue to the parent or parents in the name of the state of Montana and under the seal of the court directing such parent or parents to appear in court at a time to be fixed by the court and show cause why the petition should not be granted.

(b) Such citation, together with a copy of the petition for adoption, shall be personally served upon such parent or parents. If, however, any such parent or parents cannot be found within this state, service may be had by publication of a copy of the citation in the manner provided for the publication of summons by Rule 4, M.R.Civ.P.

(3) If, after completion of such service, any parent so served does not appear, the court may act upon the petition and the order of the court thereon shall be binding upon all persons so served; provided that any such person may appeal from the order in the manner and form provided for appeals from a judgment in civil actions.

(4) The petitioners and the child shall appear at the hearing, unless the presence of the child is waived by the court.

(5) Service of process, as aforesaid, need not be made on a parent who has consented in writing to an adoption or on any parent whose consent to adoption is not required under the provisions of 40-8-111, and service of process shall not be made on any parent who has relinquished his child to the

department of family services or an adoption agency licensed by the department.

(6) After an interlocutory decree has been issued by the court or after the date of placement for adoption, the investigator, if any, shall observe the child in his adoptive home and report in writing to the court within 6 months on any circumstances or conditions which may have a bearing on the adoption. After 6 months from the date of the interlocutory decree or the date of placement for adoption, the petitioners may apply to the court for a final decree of adoption. The court shall thereupon set a time and place for final hearing. Notice of the time and date of the hearing shall be served on the department of family services or the licensed child-placing agency or any other person named by the court. The investigator, if any, shall file with the court a written report of his findings and recommendations and certify that the described investigation, if any, has been made since the granting of the interlocutory decree or the date of placement for adoption. After hearing on said application, at which the petitioners and the child shall appear, unless the presence of the child is waived by the court, the court may enter a final decree of adoption if satisfied that the adoption is for the best interests of the child. If the adoption is denied, an appropriate order shall be made as to the future custody of the child.

History: **En. Sec. 11, Ch. 240, L. 1957; amd. Sec. 4, Ch. 199, L. 1961; amd. Sec. 1, Ch. 2, L. 1963; amd. Sec. 48, Ch. 121, L. 1974; amd. Sec. 19, Ch. 33, L. 1977; R.C.M. 1947, 61-211; amd. Sec. 5, Ch. 277, L. 1987; amd. Sec. 11, Ch. 609, L. 1987.**

Cross-References

Best interests of child, 40-4-212, 40-6-130.

Certificates of adoption, 50-15-303.

40-8-125. Effect of final decree. (1) After the final decree of adoption is entered, the relation of parent and child and all the rights, duties, and other legal consequences of the natural relation of child and parent shall thereafter exist between such adopted child and the adoptive parents adopting such child and the kindred of the adoptive parents.

(2) After the final decree of adoption is entered, the natural parents and the kindred of the natural parents of the adopted child, unless they are the adoptive parents or the spouse of an adoptive parent, shall be relieved of all parental responsibilities for said child and have no rights over such adopted child.

(3) The relationship of parent and child for the purposes of intestate succession is governed by Title 72.

History: **En. Sec. 12, Ch. 240, L. 1957; amd. Sec. 1, Ch. 102, L. 1965; R.C.M. 1947, 61-212; amd. Sec. 1, Ch. 582, L. 1989.**

Cross-References

Parent and child relationship defined, 40-6-102.

How parent and child relationship established, 40-6-104.

Relinquishment of parental rights, 40-6-135.

Substitute birth certificate for person adopted, 50-15-304.

Eligibility for subsidy, 52-2-507.

Establishment of parent-child relationship, 72-2-124.

40-8-126. Confidentiality of record and proceedings. (1) Unless the court shall otherwise order, all hearings held in proceedings under this part shall be confidential and shall be held in closed court without admittance of any person other than interested parties and their counsel.

(2) All papers and records pertaining to the adoption shall be kept as a permanent record of the court and withheld from inspection. No person shall have access to such records except:

(a) for good cause shown, on order of the judge of the court in which the decree of adoption was entered; or

(b) as provided in 50-15-206.

(3) All files and records pertaining to said adoption proceedings in the county departments of public welfare, the department of social and rehabilitation services, the department of family services, or any authorized agencies shall be confidential and withheld from inspection except upon order of court for good cause shown or as provided in 50-15-206.

History: **En. Sec. 13, Ch. 240, L. 1957; amd. Sec. 18, Ch. 121, L. 1974; R.C.M. 1947, 61-213; amd. Sec. 3, Ch. 228, L. 1981; amd. Sec. 35, Ch. 609, L. 1987.**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Records of officers open to public inspection, 2-6-104.

Sittings of court — when private, 3-1-313.

Certificate of adoption, 50-15-303.

Substitute birth certificate for person adopted, 50-15-304.

Records to be confidential, 52-2-505.

40-8-127. Appeal. An appeal may be taken from any final order, judgment, or decree rendered hereunder in the district court by any person aggrieved thereby, in the manner provided for appeals from the court in other civil matters.

History: **En. Sec. 14, Ch. 240, L. 1957; amd. Sec. 20, Ch. 33, L. 1977; R.C.M. 1947, 61-214.**

Cross-References

Montana Rules of Appellate Procedure, Title 25, ch. 21.

40-8-128. Foreign adoption decrees. When the relationship of parent and child has been created by a decree of adoption of a court of any other state or nation, the rights and obligations of the parties as to matters within the jurisdiction of this state shall be determined by 40-8-125.

History: **En. Sec. 15, Ch. 240, L. 1957; R.C.M. 1947, 61-215.**

Cross-References

Effect of judgment or final order — when conclusive, 26-3-201.

Effect of judicial record of another state, 26-3-203.

40-8-129 through 40-8-134 reserved.

40-8-135. Placement for adoption by parent — adoption by nonrelative — fees — violation — penalty. (1) Reasonable adoption fees may be paid by the adoptive parent for the actual cost of services documented in the report required by 40-8-136 and approved by the court. The cost of services must relate to:

(a) a petition for adoption;

(b) placement of a child;

(c) medical care or services;

(d) prenatal care;

(e) foster care;

(f) investigation or home study;

(g) counseling; or

(h) other reasonable costs.

(2) A person who knowingly offers, gives, agrees to give, solicits, accepts, or agrees to accept from another person anything of value greater than that allowed under subsection (1) commits the offense of paying or charging excessive adoption process fees.

(3) A person convicted of the offense of paying or charging excessive adoption process fees may be fined an amount not to exceed $10,000.

History: En. Sec. 1, Ch. 18, L. 1989; amd. Sec. 5, Ch. 684, L. 1991.

40-8-136. Placement for adoption by parent — adoption by nonrelative — report of agreements and disbursements. (1) Prior to a hearing under 40-8-109, the birth parents, prospective adoptive parents, and their representatives shall file with the court a report of agreements and disbursements, and they shall serve a copy of the report on the central office of the department.

(2) The report must contain:

(a) all oral and written agreements between the parties that relate to the future conduct of a party with respect to the child. If an oral agreement is reported, the substance of the agreement must be contained in the report and a copy of the report must be served on each party to the oral agreement. Copies of all written agreements must be attached to the report.

(b) a full accounting of all disbursements of anything of value made or agreed to be made by or on behalf of the identified adoptive parents in connection with proceedings under this chapter. This accounting must include any expenses related to:

(i) the birth of the child;

(ii) placement of the child with the identified adoptive parents, including an investigation or home study;

(iii) counseling or medical or hospital care received by the birth parent or child prior to or after the child's birth; and

(iv) services relating to the petition for adoption or the placement of the child that were received by or on behalf of a birth parent or any other person.

(c) a statement by each person furnishing information contained in the report, attesting to the correctness and truthfulness of the information furnished by that person.

History: En. Sec. 2, Ch. 18, L. 1989; amd. Sec. 6, Ch. 684, L. 1991.

Part 2
Adoption of Adults

40-8-201. Adoption of adult. A person who is an adult and has attained the age of legal majority may be adopted without the consent of his parents.

History: En. Sec. 1, Ch. 229, L. 1947; R.C.M. 1947, 61-139.

Cross-References

Minors and adults defined, 41-1-101.

Establishment of parent-child relationship, 72-2-124.

40-8-202. Procedure. Except as otherwise inconsistent with this part, the procedure and law for adoption of minors set forth in 40-8-106, 40-8-107, 40-8-121, 40-8-123, 40-8-124, and 40-8-125 shall be applicable in proceedings for the adoption of an adult under the provisions of this part, provided that provisions concerning an investigation under 40-8-122 and an interlocutory decree shall not be applicable in the case of the adoption of an adult.

History: En. Sec. 2, Ch. 229, L. 1947; amd. Sec. 5, Ch. 199, L. 1961; R.C.M. 1947, 61-140; amd. Sec. 2, Ch. 406, L. 1987.

CHAPTER 9

GRANDPARENT VISITATION

Part 1 — General Provisions

40-9-101. Application of Montana Rules of Civil Procedure.
40-9-102. Grandparent visitation rights.

Part 1

General Provisions

40-9-101. Application of Montana Rules of Civil Procedure. (1) Except as otherwise provided, the Montana Rules of Civil Procedure apply to all proceedings under this section and 40-9-102.

(2) A proceeding for grandparent visitation under this section and 40-9-102 shall be entitled, "In re the visitation of ......"

(3) The initial pleading in all proceedings under this section and 40-9-102 shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings shall be denominated as provided in the Montana Rules of Civil Procedure.

History: En. Sec. 1, Ch. 17, L. 1979.

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

40-9-102. Grandparent visitation rights. (1) Except as provided in subsection (5), the district court may grant to a grandparent of a child reasonable visitation rights, including but not limited to visitation rights regarding a child who is the subject of, or as to whom a disposition has been made during, an administrative or court proceeding under Title 41 or this title. The department of family services must be given notice of a petition for grandparent visitation regarding a child who is the subject of, or as to whom a disposition has been made during, an administrative or court proceeding under Title 41 or this title.

(2) Visitation rights granted under this section may be granted only upon a finding by the court, after a hearing, that the visitation would be in the best interest of the child.

(3) No person may petition the court under this section more often than once every 2 years unless there has been a significant change in the circumstances of the child; the child's parent, guardian, or custodian; or the child's grandparent.

(4) The court may appoint an attorney to represent the interests of a child with respect to visitation when such interests are not adequately represented by the parties to the proceeding.

(5) This section does not apply if the child has been adopted by a person other than a stepparent or a grandparent. Visitation rights granted under this section terminate upon the adoption of the child by a person other than a stepparent or a grandparent.

History: En. Sec. 2, Ch. 17, L. 1979; amd. Sec. 1, Ch. 616, L. 1983; amd. Sec. 1, Ch. 18, L. 1991.

Cross-References

Best interests of child, 40-4-212, 40-6-130.
Visitation, 40-4-217.
Effect of final decree of adoption, 40-8-125.

TITLE 41

MINORS

Ch.
1. Rights and Obligations of Minors.
2. Child Labor.
3. Child Abuse, Neglect, and Dependency.
4. Interstate Placement of Children.
5. Youth Court Act.
6. Interstate Compact on Juveniles.
7. Montana Family Policy Act.

CHAPTER 1

RIGHTS AND OBLIGATIONS OF MINORS

Part 1 — Minority

41-1-101. Minors and adults defined.
41-1-102. Periods of minority — how calculated.
41-1-103. Unborn children.

Part 2 — Civil Actions Concerning Minors

41-1-201. Liability of minors for wrongs — exemplary damages.
41-1-202. Enforcement of minor's rights.

Part 3 — Power to Contract

41-1-301. Delegation of power by minors forbidden.
41-1-302. Contracts of minors — disaffirmance.
41-1-303. Capacity of minors to borrow money for education.
41-1-304. When minors may disaffirm.
41-1-305. Minor cannot disaffirm contract for necessaries.
41-1-306. Minor cannot disaffirm certain obligations.

Part 4 — Validity of Consent to Medical Treatment

41-1-401. Health professional defined.
41-1-402. Validity of consent of minor for health services.
41-1-403. Release of information by physician.
41-1-404. Financial responsibility of minor.
41-1-405. Emergencies and special situations.
41-1-406. Psychiatric or psychological counseling under urgent circumstances.
41-1-407. Immunity and responsibility of psychologist, physician, or health care facility.

Chapter Cross-References

Rights of persons not adults, Art. II, sec. 15, Mont. Const.

Residence of minors, 1-1-215.

Youth centers — recreational facilities, 7-16-4103, 7-16-4104, 7-16-4108.

Curfew for minors, 7-32-2302.

Minor beneficiaries under PERS, 19-2-801 through 19-2-803.

Care of children of deceased policemen and firemen, Title 19, ch. 9, 18.

Education of children, Title 20.

Minors not to engage in parimutuel betting, gambling, bingo, raffles, or sports pools, 23-4-301.

Civil liability of parent for shoplifting by minor, 27-1-718.

Banking law relating to minors, 32-1-107, 32-1-444.

Savings and loan shares held by minors, 32-2-418.

Minors' interests in credit union shares, 32-3-504, 32-3-506.

Insurance law relating to minors, 33-15-103, 33-15-401, 33-15-502, 33-20-115, 33-20-1111, 33-22-212, 33-22-304, 33-22-604.

Uniform Reciprocal Enforcement of Support Act, Title 40, ch. 5, part 1.

Administrative enforcement of support for dependent children, Title 40, ch. 5, part 2.

Parent and child, Title 40, ch. 6.

Uniform Child Custody Jurisdiction Act, Title 40, ch. 7.

Missing Children Act of 1985, Title 44, ch. 2, part 5.

Day-care facilities, Title 52, ch. 2, part 7.

Operation of vehicles by minors, 61-5-107 through 61-5-109, 61-5-112, 61-5-202.

Child safety restraint law, 61-9-419 through 61-9-423.

Property law relating to minors, 70-1-404, 70-1-420, 70-1-422.

Guardianship, Title 72, ch. 5.

Uniform Transfers to Minors Act, Title 72, ch. 26.

Youth trapping license, 87-2-605.

No fishing license required for minor under 15 years of age, 87-2-805.

Part 1

Minority

Part Cross-References

Age of majority, Art. II, sec. 14, Mont. Const.

Missing Children Act of 1985, Title 44, ch. 2, part 5.

41-1-101. Minors and adults defined. (1) Minors are:

(a) males under 18 years of age;

(b) females under 18 years of age.

(2) All other persons are adults.

History: En. Secs. 10, 12, Civ. C. 1895; re-en. Secs. 3584, 3586, Rev. C. 1907; re-en. Sec. 5673, R.C.M. 1921; Cal. Civ. C. Sec. 25; Field Civ. C. Sec. 11; re-en. Sec. 5673, R.C.M. 1935; amd. Sec. 16, Ch. 240, L. 1971; amd. Sec. 23, Ch. 94, L. 1973; R.C.M. 1947, 64-101.

Cross-References

Adult rights, Art. II, sec. 14, Mont. Const.

Rights of persons not adults, Art. II, sec. 15, Mont. Const.

University students — minor defined, 20-25-501.

Civil liability of parent for shoplifting by minor, 27-1-718.

Who may contract, 28-2-201.

Agency — applicability of laws relating to capacity to contract, 28-10-704.

Montana Youth Court Act — adult and youth defined, 41-5-103.

Missing Children Act of 1985, Title 44, ch. 2, part 5.

Hard-to-place child defined, 52-2-503.

Child safety restraint law, 61-9-419 through 61-9-423.

41-1-102. Periods of minority — how calculated. The periods specified in 41-1-101 must be calculated from the first minute of the day on which persons are born to the same minute of the corresponding day completing the period of minority.

History: En. Sec. 11, Civ. C. 1895; re-en. Sec. 3585, Rev. C. 1907; re-en. Sec. 5674, R.C.M. 1921; Cal. Civ. C. Sec. 26; re-en. Sec. 5674, R.C.M. 1935; R.C.M. 1947, 64-102.

Cross-References

Compensation and support of person after attaining majority, 40-6-218.

When parental authority ceases, 40-6-234.

Who may not be personal representative, 72-3-501.

41-1-103. Unborn children. A child conceived but not yet born is to be deemed an existing person, so far as may be necessary for its interests in the event of its subsequent birth.

History: En. Sec. 13, Civ. C. 1895; re-en. Sec. 3587, Rev. C. 1907; re-en. Sec. 5675, R.C.M. 1921; Cal. Civ. C. Sec. 29; Field Civ. C. Sec. 12; re-en. Sec. 5675, R.C.M. 1935; R.C.M. 1947, 64-103.

Cross-References

Expected child — intent to release or consent — petition and notice, 40-6-127.

Legitimacy of children born after dissolution of marriage, 40-6-202.

Afterborn heirs, 72-2-118.

Part 2

Civil Actions Concerning Minors

Part Cross-References

Owner's civil liability for negligent operation of boat, 23-2-505.

Montana Rules of Civil Procedure relating to children, Rules 17(c), 27(a)(2), 40, M.R.Civ.P. (see Title 25, ch. 20).

Suits on behalf of minors, 27-1-323, 27-1-512, 27-1-514.

Minors allowed to make marriage settlements, 40-2-315.

Uniform Parentage Act, Title 40, ch. 6, part 1.

41-1-201. Liability of minors for wrongs — exemplary damages. A minor is civilly liable for a wrong done by him but is not liable in exemplary damages unless at the time of the act he was capable of knowing that it was wrongful.

History: En. Sec. 24, Civ. C. 1895; re-en. Sec. 3598, Rev. C. 1907; re-en. Sec. 5686, R.C.M. 1921; Cal. Civ. C. Sec. 41; re-en. Sec. 5686, R.C.M. 1935; R.C.M. 1947, 64-113(part).

Cross-References

Pupils — duties and sanctions, 20-5-201.

Civil liability of owner for negligent operation of boat, 23-2-505.

When exemplary damages allowed, 27-1-221.

Civil liability of parent for shoplifting by minor, 27-1-718.

Destruction of property by minor — liability of parents, 40-6-237.

41-1-202. Enforcement of minor's rights. A minor may enforce his rights by civil action or other legal proceedings in the same manner as a person of full age, except that a guardian must conduct the same.

History: En. Sec. 25, Civ. C. 1895; re-en. Sec. 3599, Rev. C. 1907; re-en. Sec. 5687, R.C.M. 1921; Cal. Civ. C. Sec. 42; Field Civ. C. Sec. 25; re-en. Sec. 5687, R.C.M. 1935; R.C.M. 1947, 64-114.

Cross-References

Appointment of guardian ad litem, 25-5-301.

Right of minor to bring civil action or other proceeding, 27-1-511.

Action by parent or guardian for injury to or death of child or ward, 27-1-512.

Who may sue for whose seduction, 27-1-514.

Statute of Limitations — when person entitled to bring action is under a disability, 27-2-401.

Uniform Parentage Act, Title 40, ch. 6, part 1.

Delegation of powers by parent or guardian, 72-5-103.

Guardians of minors, Title 72, ch. 5, part 2.

Protection of property of minors and persons under disability, Title 72, ch. 5, part 4.

Part 3

Power to Contract

Part Cross-References

Who may contract, 28-2-201.

Contracts in restraint of marriage generally void — exception for minors, 28-2-706.

Agency, 28-10-104, 28-10-704.

Power to contract — purchase of insurance by minors, 33-15-103.

41-1-301. Delegation of power by minors forbidden. A minor cannot give a delegation of power.

History: En. Sec. 16, Civ. C. 1895; re-en. Sec. 3590, Rev. C. 1907; re-en. Sec. 5678, R.C.M. 1921; Cal. Civ. C. Sec. 33; Field Civ. C. Sec. 15; re-en. Sec. 5678, R.C.M. 1935; R.C.M. 1947, 64-105.

Cross-References

Who may appoint an agent, who may be an agent, 28-10-104.

Agency — applicability of laws relating to capacity to contract, 28-10-704.

41-1-302. Contracts of minors — disaffirmance. A minor may make a conveyance or other contract in the same manner as any other person, subject only to his power of disaffirmance under the provisions of this chapter and to the provisions of Title 40, chapter 1.

History: En. Sec. 17, Civ. C. 1895; re-en. Sec. 3591, Rev. C. 1907; re-en. Sec. 5679, R.C.M. 1921; Cal. Civ. C. Sec. 34; Field Civ. C. Sec. 16; re-en. Sec. 5679, R.C.M. 1935; R.C.M. 1947, 64-106.

Cross-References

Contracts by minors, 28-2-201.

Contracts in restraint of marriage generally void — exception for minors, 28-2-706.

Marriage settlement by minors, 40-2-315.

Obligations of children, Title 40, ch. 6, part 3.

41-1-303. Capacity of minors to borrow money for education. Any person who, being a minor, contracts to borrow money to defray the expenses of attending any college or university or other institution of higher education beyond high school shall have full legal capacity to act in his own behalf and shall have all the rights, powers, and privileges and be subject to the obligations of persons of full age with respect to any such contracts.

History: En. Sec. 1, Ch. 34, L. 1963; R.C.M. 1947, 64-106.1.

Cross-References

Student financial assistance, Title 20, ch. 26.

Who may contract, 28-2-201.

Applicability of laws relating to capacity to contract — agency, 28-10-704.

Obligations of parents for the support and education of their children, 40-6-211.

41-1-304. When minors may disaffirm. In all cases other than those specified by 41-1-303, 41-1-305, and 41-1-306, the contract of a minor may, upon restoring the consideration to the party from whom it was received, be disaffirmed by the minor himself, either before his majority or within a reasonable time afterwards, or in case of his death within that period, by his heirs or personal representatives.

History: En. Sec. 18, Civ. C. 1895; re-en. Sec. 3592, Rev. C. 1907; re-en. Sec. 5680, R.C.M. 1921; Cal. Civ. C. Sec. 35; Field Civ. C. Sec. 17; re-en. Sec. 5680, R.C.M. 1935; R.C.M. 1947, 64-107; amd. Sec. 1, Ch. 29, L. 1979.

Cross-References

Who may contract, 28-2-201.

Personal representative — power to recover property which is subject of void or voidable transfer, 72-3-614.

41-1-305. Minor cannot disaffirm contract for necessaries. A minor cannot disaffirm a contract, otherwise valid, to pay the reasonable value of things necessary for his support or that of his family, entered into by him when not under the care of a parent or guardian able to provide for him or them.

History: En. Sec. 19, Civ. C. 1895; re-en. Sec. 3593, Rev. C. 1907; re-en. Sec. 5681, R.C.M. 1921; Cal. Civ. C. Sec. 36; Field Civ. C. Sec. 18; re-en. Sec. 5681, R.C.M. 1935; R.C.M. 1947, 64-108(part).

Cross-References

Contracts of persons entirely without understanding, 28-2-202.

When person of unsound mind cannot disaffirm contract, 28-2-204.

Liability for acts or debts of spouse, 40-2-106.

Earnings and accumulations of married person, 40-2-205.

Necessity determined by standard of living, 40-2-210.

Reciprocal duties of parents and children in maintaining each other, 40-6-214.

When parent liable for necessaries supplied to child, 40-6-215.

Duty of child to support indigent parents, 40-6-301.

41-1-306. Minor cannot disaffirm certain obligations. A minor cannot disaffirm an obligation, otherwise valid, entered into by him under the express authority or direction of a statute or when he has been granted limited emancipation, including a specific right to enter into contracts, under 41-3-406 and 41-3-408.

History: En. Sec. 20, Civ. C. 1895; re-en. Sec. 3594, Rev. C. 1907; re-en. Sec. 5682, R.C.M. 1921; Cal. Civ. C. Sec. 37; Field Civ. C. Sec. 19; re-en. Sec. 5682, R.C.M. 1935; R.C.M. 1947, 64-109; amd. Sec. 6, Ch. 564, L. 1983.

Cross-References

Power to contract — purchase of insurance by minors, 33-15-103.

Marriage settlement by minors, 40-2-315.

Obligations of children, Title 40, ch. 6, part 3.

Discrimination — specific limits on justification, 49-2-403.

Part 4

Validity of Consent to Medical Treatment

Part Cross-References

Consent in general, Title 28, ch. 2, part 3.

Circumstances which affect validity of apparent consent, Title 28, ch. 2, part 4.

Health provisions relating to children, 50-1-202, 50-5-101, 50-15-101, 50-15-108, 50-15-109, 50-15-203, 50-15-302, 50-15-303, 50-17-110, 50-30-102, 50-30-201 through 50-30-220, 50-53-102.

Medical assistance for children, 53-6-101 through 53-6-104.

Treatment of developmentally disabled, Title 53, ch. 20, part 1.

Treatment of seriously mentally ill, Title 53, ch. 21, part 1.

41-1-401. Health professional defined. Health professional as used in this part shall include only those persons licensed in Montana as physicians, psychiatrists, psychologists, or dentists.

History: En. 69-6105.1 by Sec. 6, Ch. 312, L. 1974; R.C.M. 1947, 69-6105.1.

Cross-References

Licensing — practice of medicine, Title 37, ch. 3, part 3.

Licensing — dentists, Title 37, ch. 4, part 3.

Psychologists — licensing, Title 37, ch. 17, part 3.

41-1-402. Validity of consent of minor for health services. (1) The consent to the provision of medical or surgical care or services by a hospital, public clinic, or the performance of medical or surgical care or services by a physician licensed to practice medicine in this state may be given by a minor who professes or is found to meet any of the following descriptions:

(a) a minor who is or was ever married or has had a child or graduated from high school or is emancipated;

(b) a minor who has been separated from his parent, parents, or legal guardian for whatever reason and is supporting himself by whatever means;

(c) a minor who professes or is found to be pregnant or afflicted with any reportable communicable disease, including a sexually transmitted disease, or drug and substance abuse, including alcohol. This self-consent only applies to the prevention, diagnosis, and treatment of those conditions specified in this subsection. The self-consent in the case of pregnancy, a sexually transmitted disease, and drug and substance abuse also obliges the health professional, if he accepts the responsibility for treatment, to counsel the minor by himself or by referral to another health professional for counseling.

(d) a minor who needs emergency care, including transfusions, without which his health will be jeopardized. If emergency care is rendered, the parent, parents, or legal guardian shall be informed as soon as practical except under the circumstances mentioned in this subsection (1).

(2) A minor who has had a child may give effective consent to health service for his child.

(3) A minor may give consent for health care for his spouse if his spouse is unable to give consent by reason of physical or mental incapacity.

History: En. Sec. 1, Ch. 189, L. 1969; amd. Sec. 1, Ch. 312, L. 1974; amd. Sec. 23, Ch. 100, L. 1977; R.C.M. 1947, 69-6101; amd. Sec. 14, Ch. 440, L. 1989.

Cross-References

When parental authority ceases, 40-6-234.

Emergency medical services, Title 50, ch. 6.

Sexually transmitted diseases, Title 50, ch. 18.

Pregnancy — serological testing, Title 50, ch. 19, part 1.

Mentally ill — voluntary admission of minors, 53-21-112.

Alcoholism and drug dependence, Title 53, ch. 24.

41-1-403. Release of information by physician. (1) A treating physician or other health professional may, but shall not be obligated to, inform the spouse, parent, custodian, or guardian of any such minor in the circumstances as enumerated in 41-1-402 of any treatment given or needed when:

(a) in the judgment of the health professional, severe complications are present or anticipated;

(b) major surgery or prolonged hospitalization is needed;

(c) failure to inform the parent, parents, or legal guardian would seriously jeopardize the safety and health of the minor patient, younger siblings, or the public;

(d) to inform them would benefit the minor's physical and mental health and family harmony; or

(e) the hospital desires a third-party commitment to pay for services rendered or to be rendered.

(2) Notification or disclosure to the spouse, parent, parents, or legal guardian by the health professional shall not constitute libel or slander, a violation of the right of privacy, a violation of the rule of privileged communication, or any other legal basis of liability. When the minor is found not to be pregnant or not afflicted with a sexually transmitted disease or not suffering from a drug- or substance-abuse, including alcohol, then no information with respect to any appointment, examination, test, or other health procedure shall be given to the parent, parents, or legal guardian, if they have not been already informed as permitted in this part, without the consent of the minor.

History: En. Sec. 2, Ch. 189, L. 1969; amd. Sec. 2, Ch. 312, L. 1974; R.C.M. 1947, 69-6102; amd. Sec. 15, Ch. 440, L. 1989.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Privileges, Art. V, M.R.Ev. (see Title 26, ch. 10).

Libel and slander, Title 27, ch. 1, part 8.

Criminal defamation, 45-8-212.

Confidentiality of health care information, Title 50, ch. 16, part 5.

Uniform Health Care Information Act, Title 50, ch. 16, part 5.

41-1-404. Financial responsibility of minor. Consent of the minor shall not be subject to later disaffirmance or revocation because of minority. The spouse, parent, parents, or legal guardian of a consenting minor shall not be liable for payment for such service unless the spouse, parent, parents, or legal guardian have expressly agreed to pay for such care. Minors so consenting for such health services shall thereby assume financial responsibility for the cost of said services, except those who are proven unable to pay and who receive the services in public institutions. If the minor is covered by health insurance, payment may be applied for services rendered.

History: En. Sec. 3, Ch. 189, L. 1969; amd. Sec. 3, Ch. 312, L. 1974; R.C.M. 1947, 69-6103.

Cross-References

Purchase of insurance by minors, 33-15-103.

Insurance claims and benefits, Title 33, ch. 15, part 5.

When parent not liable for support furnished child, 40-6-216.

Minor not to disaffirm certain obligations, 41-1-306.

41-1-405. Emergencies and special situations. (1) Any health professional may render or attempt to render emergency service or first aid, medical, surgical, dental, or psychiatric treatment, without compensation, to any injured person or any person regardless of age who is in need of immediate health care when, in good faith, the professional believes that the giving of aid is the only alternative to probable death or serious physical or mental damage.

(2) Any health professional may render nonemergency services to minors for conditions which will endanger the health or life of the minor if services would be delayed by obtaining consent from spouse, parent, parents, or legal guardian.

(3) No consent shall be required of any minor who does not possess the mental capacity or who has a physical disability which renders him incapable of giving his consent and who has no known relatives or legal guardians, if a physician determines the health service should be given.

(4) Self-consent of minors shall not apply to sterilization or abortion.

History: En. Sec. 4, Ch. 189, L. 1969; amd. Sec. 4, Ch. 312, L. 1974; R.C.M. 1947, 69-6104.

Cross-References

Limits on liability for emergency care rendered at scene of accident or emergency, 27-1-714.

Consent in general, Title 28, ch. 2, part 3.

Exemptions from licensing requirements — emergencies, 37-3-103.

Montana Abortion Control Act, Title 50, ch. 20, part 1.

41-1-406. Psychiatric or psychological counseling under urgent circumstances. When executed by a minor, the consent to the providing of psychiatric or psychological counseling by a physician or psychologist licensed to practice in this state, under circumstances when the need for such counseling is urgent in the opinion of the physician or psychologist involved because of danger to the life, safety, or property of a minor or of other person or persons and the consent of the spouse, parent, custodian, or guardian of the minor cannot be obtained within a reasonable time to offset the danger to life or safety, shall be as valid and binding as if the minor had achieved majority. That is, such minor has the same legal capacity to act and the same legal obligations with regard to the giving of such consent as a person of full legal age and capacity, and such consent may not be subject to later disaffirmance by reason of such minority. The consent of no other person or persons (including but not limited to a spouse, parent, custodian, or guardian) is necessary in order to authorize the psychiatric or psychological counseling of such minor. However, no parent may be obligated for the cost of such counseling without his consent.

History: **En. Sec. 1, Ch. 315, L. 1971; amd. Sec. 24, Ch. 100, L. 1977; R.C.M. 1947, 69-6106.**

Cross-References

Consent in general, Title 28, ch. 2, part 3.

When parent not liable for support furnished child, 40-6-216.

Endangering the welfare of children, 45-5-622.

41-1-407. Immunity and responsibility of psychologist, physician, or health care facility. (1) No physician, surgeon, dentist, or health or mental health care facility may be compelled against their best judgment to treat a minor on his own consent.

(2) Nothing contained in this section shall be construed to relieve any physician, surgeon, dentist, or health or mental health care facility from liability for negligence in the diagnosis and treatment rendered such minor.

(3) In any case arising under the provisions of 41-1-406, the physician or licensed psychologist who provides the psychiatric or psychological counseling services shall incur no civil or criminal liability by reason of having provided the counseling services, but such immunity shall not apply to any negligent acts or omissions.

History: **(1), (2)En. Sec. 5, Ch. 189, L. 1969; amd. Sec. 5, Ch. 312, L. 1974; Sec. 69-6105, R.C.M. 1947; (3)En. Sec. 2, Ch. 315, L. 1971; Sec. 69-6107, R.C.M. 1947; R.C.M. 1947, 69-6105, 69-6107.**

Cross-References

Liability for negligence as well as willful acts, 27-1-701.

Comparative negligence, 27-1-702.

CHAPTER 2

CHILD LABOR

Part 1 — Child Labor Standards Act

41-2-101. Repealed.
41-2-102. Short title.
41-2-103. Definitions.
41-2-104. Exemptions.
41-2-105. Prohibited employment of minors under fourteen years of age.
41-2-106. Prohibited employment of minors who are fourteen and fifteen years old.
41-2-107. Prohibited employment of minors who are sixteen and seventeen years old.

41-2-108. Employment of minors who are fourteen and fifteen years old.
41-2-109. Exemptions from prohibited occupations in agriculture.
41-2-110. Exemptions from prohibited employment of minors who are sixteen or seventeen years old.
41-2-111. Repealed.
41-2-112. Repealed.
41-2-113. Repealed.
41-2-114. Repealed.
41-2-115. Working hours.
41-2-116. Enforcement — right to enter and inspect premises and records — subpoena power.
41-2-117. Power to adopt rules.
41-2-118. Penalties.
41-2-119 and 41-2-120 reserved.
41-2-121. Repealed.

Chapter Cross-References

Duties of Department of Labor and Industry, 39-1-102.

Cooperation with federal government, 39-1-104.

Unemployment insurance — exclusion from definition of employment — child employed by parent, 39-51-204.

Workers' compensation coverage of minor employee, 39-71-602.

Workers' compensation benefits to minors, 39-71-2203.

Sheltered workshops, Title 53, ch. 7, part 2.

Part 1

Child Labor Standards Act

Part Cross-References

Students — exclusion from PERS, 19-3-403.

Employment defined, 39-2-101.

Exclusions from minimum wage provisions, 39-3-406.

41-2-101. Repealed. Sec. 14, Ch. 391, L. 1993.

History: En. Sec. 1, Ch. 99, L. 1907; Sec. 1746, Rev. C. 1907; re-en. Sec. 3095, R.C.M. 1921; re-en. Sec. 3095, R.C.M. 1935; R.C.M. 1947, 10-201.

41-2-102. Short title. This part may be cited as the "Child Labor Standards Act".

History: En. Sec. 1, Ch. 391, L. 1993.

41-2-103. Definitions. As used in this part, the following definitions apply:

(1) "Agriculture" means:

(a) all aspects of farming, including the cultivation and tillage of the soil;

(b) (i) dairying; and

(ii) the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, including commodities defined as agricultural commodities in the federal Agricultural Marketing Act (12 U.S.C. 1141j(g));

(c) the raising of livestock, bees, fur-bearing animals, or poultry; and

(d) any practices, including forestry or lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with farming operations, including preparation for market or delivery to storage, to market, or to carriers for transportation to market.

(2) "Department" means the department of labor and industry provided for in 2-15-1701.

(3) "Domestic service" means an occasional, irregular, or incidental nonhazardous occupational activity related to and conducted in or around a private residence, including but not limited to babysitting, pet sitting or similar household chore, and manual yard work. Domestic service specifically excludes industrial homework.

(4) (a) "Employed" or "employment" means an occupation engaged in, permitted, or suffered, with or without compensation in money or other valuable consideration, whether paid to the minor or to some other person, including but not limited to occupations as servant, agent, subagent, or independent contractor.

(b) The term does not include casual, community service, nonrevenue raising, uncompensated activities.

(5) "Employer" includes an individual, partnership, association, corporation, business trust, person, or group of persons acting directly or indirectly in the interest of an employer in relation to an employee.

(6) "Minor" means an individual under 18 years of age, except for an individual who:

(a) has received a high school diploma or has received a passing score on the general education development examination; or

(b) is 16 years of age or older and is enrolled in a registered state or federal apprenticeship program.

(7) "Occupation" means:

(a) an occupation, service, trade, business, or industry in which employees are employed;

(b) any branch or group of industries in which employees are employed; or

(c) any employment or class of employment in which employees are employed.

History: En. Sec. 2, Ch. 391, L. 1993.

41-2-104. Exemptions. The provisions of this part do not apply to a minor who is employed:

(1) in an agricultural occupation not otherwise prohibited by this part and who has received written consent from the minor's parents or a person standing in place of the parent who works on a farm or ranch where the parent or person is also employed;

(2) in domestic service or an agricultural pursuit performed outside school hours in connection with a home or a farm owned or operated by the minor's parent or by a person standing in place of the parent;

(3) by the parent or a person standing in place of the parent;

(4) during periods of school vacations on a campsite of a nonprofit corporation engaged in citizenship training and character building;

(5) as an actor, model, or performer;

(6) outside school hours by a homeowner in casual work usual to the home of the homeowner and not in connection with the homeowner's business, trade, or profession;

(7) by the legislature as a legislative aide or page; or

(8) in the distribution or sale of or in the collection for newspapers, periodicals, or circulars.

History: **En. Sec. 3, Ch. 391, L. 1993.**

41-2-105. Prohibited employment of minors under fourteen years of age. Except as provided in 41-2-104, a minor who is under 14 years of age may not be employed in or in connection with an occupation.

History: **En. Sec. 4, Ch. 391, L. 1993.**

41-2-106. Prohibited employment of minors who are fourteen and fifteen years old. Unless otherwise exempted, a minor 14 or 15 years of age may not be employed in the prohibited occupations in 41-2-107 or in:

(1) a manufacturing occupation;

(2) a processing occupation, including but not limited to filleting fish, dressing poultry, cracking nuts, or laundering and drycleaning;

(3) an occupation that requires the performance of duties in a workroom or workplace where goods are manufactured, mined, or processed;

(4) the operation or tending of a hoisting apparatus or of power-driven machinery;

(5) an occupation in connection with:

(a) transporting persons or property by rail, highway, air, water, pipeline, or other means;

(b) warehousing and storage;

(c) communication and public utilities; or

(d) construction or repair;

(6) an occupation in a retail, food service, or gasoline establishment, including:

(a) work performed in or around a boiler or an engine room;

(b) work in connection with the maintenance or the repair of an establishment, machine, or equipment;

(c) outside window washing that involves working from windowsills and all work requiring the use of ladders, scaffolds, or their substitutes at a height of more than 20 feet;

(d) an occupation that involves operating, assembling, adjusting, cleaning, oiling, or repairing power-driven food slicers and grinders, food choppers and cutters, or bakery-type mixers;

(e) work in freezers and meat coolers and all work preparing meat for sale, except wrapping, scaling, labeling, weighing, pricing, and stacking when performed in other areas;

(f) loading or unloading goods to and from a truck, railroad car, or conveyor; or

(g) an occupation in a warehouse, except for office or clerical work;

(7) the following agricultural occupations, unless otherwise exempt or working as a student-learner pursuant to 41-2-109:

(a) felling, bucking, skidding, loading, or unloading timber with a butt diameter of more than 9 inches;

(b) repairing a building from a ladder or scaffold at a height of more than 20 feet;

(c) working inside:

(i) a fruit, forage, or grain storage structure designed to retain an oxygen-deficient or toxic atmosphere; or

(ii) an upright silo within 2 weeks after silage has been added or when a top unloading device is in operating position;

(d) handling or using agricultural chemicals classified as poisonous;

(e) handling or using a blasting agent, including but not limited to dynamite, black powder, sensitized ammonium nitrate, blasting caps, or primer cord; or

(f) transporting, transferring, or applying anhydrous ammonia.

History: **En. Sec. 5, Ch. 391, L. 1993.**

41-2-107. Prohibited employment of minors who are sixteen and seventeen years old. Unless working as an apprentice or student-learner under the provisions of 41-2-110, a minor 16 or 17 years of age may not be employed in or in connection with any of the following occupations:

(1) manufacturing or storing explosives or articles containing explosive components;

(2) logging and the operation of a sawmill, lath mill, or shingle mill;

(3) the operation of power-driven woodworking machines;

(4) an occupation involving exposure to a radioactive substance or ionizing radiation;

(5) the operation of a freight elevator, except for a freight elevator permitted for use under the child labor provisions of the federal Fair Labor Standards Act of 1938, or other power-driven hoisting apparatus;

(6) the operation of a power-driven metal forming, punching, and shearing machine;

(7) a mining occupation;

(8) slaughtering, meatpacking, meat processing, or rendering;

(9) the operation of a power-driven bakery machine;

(10) the operation of a power-driven paper products machine;

(11) the manufacture of brick, tile, or similar products;

(12) the operation of a circular saw, bandsaw, or guillotine shears;

(13) a wrecking or demolition operation;

(14) an excavation operation;

(15) a roofing operation;

(16) riding outside a motor vehicle to assist in transporting or delivering goods; and

(17) a coal mining operation.

History: **En. Sec. 6, Ch. 391, L. 1993.**

41-2-108. Employment of minors who are fourteen and fifteen years old. (1) Unless enrolled in and employed pursuant to a school supervised and school administered work experience or career exploration program pursuant to 41-2-115(2), a minor 14 or 15 years of age may not be employed in any occupation during school hours.

(2) A minor 14 or 15 years of age may be employed outside school hours in:

(a) the distribution or sale of or in the collection for newspapers, magazines, periodicals, or circulars; and

(b) the following occupations in retail, food service, and gasoline service establishments:

(i) office and clerical work, including the operation of an office machine;

(ii) cashiering, selling, modeling, art work, work in an advertising department, window trimming, and comparative shopping;

(iii) price marking and tagging by hand or by machine, assembling orders, packing, and shelving;

(iv) bagging and carrying out a customer's order;

(v) errand and delivery work by foot, bicycle, or public transportation;

(vi) cleanup work, including the use of a vacuum cleaner and a floor waxer, and maintenance of grounds, but not including the use of a power-driven mower or cutter;

(vii) kitchen work and other work involved in preparing and serving food and beverages, including the operation of machines and devices used in the performance of the work, which may include but are not limited to a dishwasher, toaster, dumbwaiter, popcorn popper, milkshake blender, and coffee grinder; or

(viii) work in connection with cars and trucks if confined to dispensing gasoline and oil; courtesy service; car cleaning, washing, and polishing; but not including work involving the use of a pit, a rack, or a lifting apparatus or involving the inflation of a tire mounted on a rim equipped with a removable ring.

History: En. Sec. 7, Ch. 391, L. 1993.

41-2-109. Exemptions from prohibited occupations in agriculture. (1) The prohibitions from employment in agricultural operations provided for in 41-2-106(7) do not apply to the employment of a student-learner who is 14 or 15 years of age if all of the following requirements are met:

(a) The student-learner is enrolled in a vocational education training program in agriculture under a recognized state or local educational authority or in a substantially similar program conducted by a private school.

(b) The student-learner is employed under a written agreement, providing that:

(i) the work is incidental to training;

(ii) the work is intermittent, for short periods of time, and under the direct and close supervision of a qualified and experienced person;

(iii) safety instruction is given by the school and correlated by the employer with on-the-job training; and

(iv) a schedule of organized and progressive work processes to be performed on the job has been prepared.

(c) The written agreement contains the name of the student-learner and is signed by the employer and by a person authorized to represent the educational authority or school.

(d) Copies of each agreement are kept on file both by the educational authority or school and by the employer.

(2) The prohibitions in 41-2-106(7) do not apply to the employment of a minor who is 14 or 15 years of age in those occupations in which the minor has successfully completed a work training program, including safety instruction and training in the use of machinery, under the 4-H program of the federal

extension service, a program of the United States department of education, or a similar program if the safety program has been approved by the department and if the minor is employed outside school hours on the equipment for which the minor has been trained.

History: En. Sec. 8, Ch. 391, L. 1993.

41-2-110. Exemptions from prohibited employment of minors who are sixteen or seventeen years old. (1) The prohibitions in 41-2-107 do not apply to the employment of an apprentice or student-learner who is 16 or 17 years of age if the minor is employed under the following conditions:

(a) for an apprentice, if:

(i) the minor is employed in a craft recognized as an apprenticeable trade;

(ii) the work is incidental to the minor's training;

(iii) the work is intermittent, for short periods of time, and under the direct and close supervision of a journeyman as a necessary part of the apprentice training; and

(iv) the minor is registered by the bureau of apprenticeship and training of the United States department of labor as employed in accordance with the standards established by that bureau or is registered by the department as employed in accordance with the standards of the department;

(b) for a student-learner, if:

(i) the student-learner is enrolled in a course of study and training in a cooperative vocational training program under a recognized state or local educational authority or in a course of study in a substantially similar program conducted by a private school;

(ii) the student-learner is employed under a written agreement, providing that:

(A) the work of the student-learner is incidental to the student-learner's training;

(B) the work is intermittent, for short periods of time, and under the direct and close supervision of a qualified and experienced person;

(C) safety instruction is given by the school and correlated by the employer with on-the-job training; and

(D) a schedule of organized and progressive work processes to be performed on the job has been prepared;

(iii) the written agreement contains the name of the student-learner and is signed by the employer and the school coordinator or principal; and

(iv) copies of each agreement are kept on file both by the educational authority or school and by the employer.

(2) This exemption for the employment of student-learners may be revoked by the department in any situation if the department finds that reasonable precautions have not been observed for the safety of minors employed under the exemption.

(3) A high school graduate who is 16 or 17 years of age may be employed in an occupation in which the graduate has completed training as a student-learner as provided in this section.

History: En. Sec. 9, Ch. 391, L. 1993.

41-2-111. Repealed. Sec. 14, Ch. 391, L. 1993.

History: En. Sec. 2, Ch. 99, L. 1907; Sec. 1747, Rev. C. 1907; re-en. Sec. 3096, R.C.M. 1921; re-en. Sec. 3096, R.C.M. 1935; R.C.M. 1947, 10-202.

41-2-112. Repealed. Sec. 1, Ch. 241, L. 1989.

History: En. Sec. 3, Ch. 99, L. 1907; Sec. 1748, Rev. C. 1907; re-en. Sec. 3097, R.C.M. 1921; re-en. Sec. 3097, R.C.M. 1935; R.C.M. 1947, 10-203.

41-2-113. Repealed. Sec. 14, Ch. 391, L. 1993.

History: En. Sec. 4, Ch. 99, L. 1907; Sec. 1749, Rev. C. 1907; re-en. Sec. 3098, R.C.M. 1921; re-en. Sec. 3098, R.C.M. 1935; amd. Sec. 1, Ch. 100, L. 1977; R.C.M. 1947, 10-204.

41-2-114. Repealed. Sec. 14, Ch. 391, L. 1993.

History: En. Sec. 5, Ch. 99, L. 1907; Sec. 1750, Rev. C. 1907; re-en. Sec. 3099, R.C.M. 1921; re-en. Sec. 3099, R.C.M. 1935; amd. Sec. 2, Ch. 100, L. 1977; R.C.M. 1947, 10-205.

41-2-115. Working hours. (1) Unless otherwise exempt or as provided in subsection (2), a minor who is 14 or 15 years of age:

(a) may not be employed before 7 a.m. or after 7 p.m., except that the minor may be employed until 9 p.m. during periods outside the school year (June 1 through Labor Day, depending on local standards); or

(b) may not be employed more than:

(i) 3 hours on a school day;

(ii) 18 hours in a school week;

(iii) 8 hours on a nonschool day; or

(iv) 40 hours in a week in a nonschool week.

(2) A minor who is 14 or 15 years of age and who is enrolled in and employed pursuant to a school-supervised and school-administered work experience or career exploration program approved by the department or the office of public instruction may be employed up to 23 hours in 1 week when the program is in session, any portion of which may be during school hours.

History: En. Sec. 10, Ch. 391, L. 1993.

41-2-116. Enforcement — right to enter and inspect premises and records — subpoena power. The department shall enforce the provisions of this part and file a complaint against a person who violates the provisions of this part. The department may at any time enter and inspect any place or establishment governed by the provisions of this part and have access to employment records kept on file by the employer that may aid in the enforcement of this part. The department may subpoena documentary evidence relating to an investigation under this part.

History: En. Sec. 11, Ch. 391, L. 1993.

41-2-117. Power to adopt rules. The department shall adopt rules, including definitions of terms, to carry out the purposes of this part and to prevent the circumvention or evasion of this part.

History: En. Sec. 12, Ch. 391, L. 1993.

41-2-118. Penalties. An employer who violates any of the provisions of this part is guilty of a misdemeanor and is punishable as provided in 46-18-212. Each day during which a violation of this part continues constitutes a separate offense, and the employment of a minor in violation of this part constitutes, with respect to each minor employed, a separate offense.

History: En. Sec. 13, Ch. 391, L. 1993.

41-2-119 and 41-2-120 reserved.

41-2-121. Repealed. Sec. 14, Ch. 391, L. 1993.

History: En. Sec. 6, Ch. 99, L. 1907; Sec. 1751, Rev. C. 1907; re-en. Sec. 3100, R.C.M. 1921; re-en. Sec. 3100, R.C.M. 1935; R.C.M. 1947, 10-206.

CHAPTER 3

CHILD ABUSE, NEGLECT, AND DEPENDENCY

Part 1 — General

41-3-101. Declaration of policy.
41-3-102. Definitions.
41-3-103. Jurisdiction and venue.
41-3-104. Renumbered 41-3-1122.
41-3-105. Renumbered 41-3-1125.
41-3-106. Prosecution of offenders.
41-3-107. Interagency cooperation.
41-3-108. Child protective teams.

Part 2 — Reports and Investigations

41-3-201. Reports.
41-3-202. Action on reporting.
41-3-203. Immunity from liability.
41-3-204. Admissibility and preservation of evidence.
41-3-205. Confidentiality — disclosure exceptions.
41-3-206. Procedure in case of child's death.
41-3-207. Penalty for failure to report.
41-3-208. Rulemaking authority.

Part 3 — Protective Care

41-3-301. Emergency protective service.
41-3-302. Responsibility of providing protective services.
41-3-303. Guardian ad litem.

Part 4 — Abuse, Neglect, or Dependency Proceedings

41-3-401. Abuse, neglect, and dependency petitions.
41-3-402. Petition for temporary investigative authority and protective services.
41-3-403. Order for immediate protection of youth.
41-3-404. Adjudicatory hearing — temporary disposition.
41-3-405. Combined with 41-5-805, renumbered 41-3-1123.
41-3-406. Dispositional hearing — contributions by parents or guardians for youth's care.
41-3-407. Combined with 41-5-806, renumbered 41-3-1124.
41-3-408. Limited emancipation.
41-3-409. Appeals.
41-3-410. Length of time in foster care — permanent disposition.

Part 5 — Foster Homes and Other Private Institutions (Renumbered by Sec. 31, Ch. 465, L. 1983)

Part 6 — Parent-Child Legal Relationship Termination

41-3-601. Short title.
41-3-602. Purpose.
41-3-603. Definitions.
41-3-604 through 41-3-606 reserved.
41-3-607. Petition for termination — separate hearing — right to counsel — no jury trial.
41-3-608. Notice.
41-3-609. Criteria for termination.

41-3-610. Review following termination.
41-3-611. Effect of decree.
41-3-612. Appeals.

Part 7 — Montana Children's Trust Fund

41-3-701. Child abuse and neglect prevention program.
41-3-702. Children's trust fund account — nonsupplantation of funds.
41-3-703. Gifts and grants to program.
41-3-704. Program costs.

Parts 8 and 9 reserved

Part 10 — Local Citizen Review Board Pilot Program Act

41-3-1001. Short title.
41-3-1002. Establishment of pilot program.
41-3-1003. Establishment of local citizen review board — membership.
41-3-1004. Administration — training — procedures.
41-3-1005. Removal of members — grounds.
41-3-1006. Terms — officers — meetings.
41-3-1007. Confidentiality of information — penalty.
41-3-1008. Access to records.
41-3-1009. Assignment of cases for review.
41-3-1010. Review — scope — procedures — immunity.
41-3-1011. Recommendations by board.
41-3-1012. Presence of certain employees at meetings of board.
41-3-1013. Court review of findings and recommendations of board.
41-3-1014. Dispositional review hearing by youth court.

Part 11 — Youth Residential Services

41-3-1101. Establishment of substitute care for youth.
41-3-1102. Definitions.
41-3-1103. Powers and duties of department.
41-3-1104. Aftercare facilities.
41-3-1105. Transfer of custody to private agency — reports.
41-3-1106. Repealed.
41-3-1107 through 41-3-1110 reserved.
41-3-1111. Renumbered 41-5-314.
41-3-1112. Petition for placement in facility.
41-3-1113. Repealed.
41-3-1114. Continuing jurisdiction of youth court.
41-3-1115. Foster care review committee.
41-3-1116 through 41-3-1120 reserved.
41-3-1121. Repealed.
41-3-1122. Payment for support of youth in need of care, youth in need of supervision, or delinquent youth — reimbursement by county.
41-3-1123. Repealed.
41-3-1124. Repealed.
41-3-1125. Repealed.
41-3-1126. Debt to state by natural or adoptive parents — limitations.
41-3-1127 through 41-3-1130 reserved.
41-3-1131. Power of nonprofit corporations to establish homes and to receive facilities and funds.
41-3-1132. Governmental contracts with nonprofit organizations.
41-3-1133 through 41-3-1140 reserved.
41-3-1141. License required.
41-3-1142. Issuance of license — authority of issuing agency.
41-3-1143. Penalty for failure to obtain license.
41-3-1144 through 41-3-1150 reserved.
41-3-1151. Respite care.
41-3-1152. Respite care providers — recruitment, training, and employment — qualifications.

Chapter Cross-References

Missing Children Act of 1985, Title 44, ch. 2, part 5.

Justifiable use of force with respect to children, 45-3-104, 45-3-107.

Custodial interference, 45-5-304.

Incest, 45-5-507.

Provisions generally applicable to sexual crimes, 45-5-511.

Aggravated promotion of prostitution, 45-5-603.

Nonsupport, 45-5-621.

Endangering the welfare of children, 45-5-622.

Unlawful transactions with children, 45-5-623.

Unlawful possession of an intoxicating substance by children, 45-5-624.

Sexual abuse of children, 45-5-625.

Abortion — written notice to spouse or parent required, 50-20-107.

Welfare provisions relating to children and families, 53-2-101, 53-2-201, 53-2-206, 53-2-610, 53-2-611; Title 53, ch. 3.

Aid to Families With Dependent Children, Title 53, ch. 4, part 2.

Part 1

General

41-3-101. Declaration of policy. (1) It is hereby declared to be the policy of the state of Montana to:

(a) insure that all youth are afforded an adequate physical and emotional environment to promote normal development;

(b) compel in proper cases the parent or guardian of a youth to perform the moral and legal duty owed to the youth;

(c) achieve these purposes in a family environment whenever possible; and

(d) preserve the unity and welfare of the family whenever possible.

(2) It is the policy of this state to provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for their care and protection. It is intended that the mandatory reporting of such cases by professional people and other community members to the appropriate authority will cause the protective services of the state to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life wherever appropriate.

History: (1)En. 10-1300 by Sec. 1, Ch. 328, L. 1974; Sec. 10-1300, R.C.M. 1947; (2)En. Sec. 1, Ch. 178, L. 1965; amd. Sec. 1, Ch. 292, L. 1973; Sec. 10-901, R.C.M. 1947; redes. 10-1303 by Sec. 14, Ch. 328, L. 1974; Sec. 10-1303, R.C.M. 1947; R.C.M. 1947, 10-1300, 10-1303; amd. Sec. 1, Ch. 543, L. 1979.

Cross-References

Obligations of parents for the support and education of their children, 40-6-211.

Remedy for parental abuse, 40-6-233.

When parental authority ceases, 40-6-234.

Use of force by parent, guardian, or teacher, 45-3-107.

Minimum 30-day sentence for certain sexual abuse crimes, 46-18-201.

41-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) "A person responsible for a child's welfare" means the child's parent, guardian, or foster parent; a staff person providing care in a day-care facility; an employee of a public or private residential institution, facility, home, or agency; or any other person legally responsible for the child's welfare in a residential setting.

(2) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

(3) (a) "Adequate health care" means any medical care, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) Nothing in this chapter may be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent, due to religious beliefs, does not provide medical care for a child. However, nothing in this chapter may be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent or substantial risk of harm to the child.

(4) "Child" or "youth" means any person under 18 years of age.

(5) (a) "Child abuse or neglect" means:

(i) harm to a child's health or welfare, as defined in subsection (8); or

(ii) threatened harm to a child's health or welfare, as defined in subsection (15).

(b) The term includes harm or threatened harm to a child's health or welfare by the acts or omissions of a person responsible for the child's welfare.

(6) "Department" means the department of family services provided for in 2-15-2401.

(7) "Dependent youth" means a youth:

(a) who is abandoned;

(b) who is without parents or guardian or not under the care and supervision of a suitable adult;

(c) who has no proper guidance to provide for necessary physical, moral, and emotional well-being;

(d) who is destitute;

(e) who is dependent upon the public for support; or

(f) whose parent or parents have voluntarily relinquished custody and whose legal custody has been transferred to a licensed agency.

(8) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical or mental injury;

(b) commits or allows to be committed sexual abuse or exploitation of the child;

(c) causes failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

(d) abandons the child by leaving the child under circumstances that make reasonable the belief that the parent or other person does not intend to resume care of the child in the future or by willfully surrendering physical custody for a period of 6 months and during that period does not manifest to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or

(e) is unknown and has been unknown for a period of 90 days and reasonable efforts to identify and locate the parents have failed.

(9) "Limited emancipation" means a status conferred on a dependent youth by a court after a dispositional hearing in accordance with 41-3-406 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

(10) "Mental injury" means an identifiable and substantial impairment of the child's intellectual or psychological functioning.

(11) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function and includes death, permanent or temporary disfigurement, and impairment of a bodily organ or function sustained as a result of excessive corporal punishment.

(12) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5.

(13) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

(14) "Social worker" means an employee of the department whose duties generally involve the provision of either child or adult protective services, or both.

(15) "Threatened harm to a child's health or welfare" means substantial risk of harm to the child's health or welfare.

(16) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions. However, the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(a) the infant is chronically and irreversibly comatose;

(b) the provision of treatment would:

(i) merely prolong dying;

(ii) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(iii) otherwise be futile in terms of the survival of the infant; or

(c) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection, "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children over 1 year of age.

(17) "Youth in need of care" means a youth who is dependent, abused, or neglected as defined in this section.

History: En. 10-1301 by Sec. 2, Ch. 328, L. 1974; amd. Sec. 18, Ch. 100, L. 1977; R.C.M. 1947, 10-1301; amd. Sec. 2, Ch. 543, L. 1979; amd. Sec. 2, Ch. 511, L. 1981; amd. Sec. 31, Ch. 465, L. 1983; amd. Sec. 1, Ch. 564, L. 1983; amd. Sec. 1, Ch. 626, L. 1985; amd. Sec. 1, Ch. 463, L. 1987; amd. Sec. 36, Ch. 609, L. 1987; amd. Sec. 1, Ch. 474, L. 1989; amd. Sec. 1, Ch. 439, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 439 substituted present definition of abused or neglected for former definition that read: ""Abused or neglected child" means a child whose normal physical or mental health or welfare is harmed or threatened with harm by the acts or omissions of his parent or other person responsible for his welfare"; in (a) of definition of adequate health care, near beginning after "medical", deleted "or nonmedical remedial health" and inserted (b) regarding failure to provide medical care for a child based on religious beliefs; inserted definition of child abuse or neglect; near middle of (c) of definition of harm to a child's health or welfare, before "health", inserted "adequate"; and made minor changes in style.

Cross-References

Admittance of child to school, 20-5-101.

Compulsory attendance and excuses, 20-5-103.

Limitations on liability for emergency care rendered by physician, 27-1-714.

Montana Medical Legal Panel Act, Title 27, ch. 6.

Medicine — regulation and licensing, Title 37, ch. 3.

Form, execution, and revocation of releases — termination of parents' or guardian's rights, 40-6-135.

Obligations of parents, Title 40, ch. 6, part 2.

When parent may bring action for the exclusive control of children — decree, 40-6-223.

Remedy for parental abuse, 40-6-233.

Parent allowed to relinquish services and custody of child, 40-6-235.

Consent required for adoption, 40-8-111.

Sexual assault, 45-5-502.

Sexual intercourse without consent, 45-5-503.

Incest, 45-5-507.

Provisions generally applicable to sexual crimes, 45-5-511.

Aggravated promotion of prostitution, 45-5-603.

Nonsupport, 45-5-621.

Endangering the welfare of children, 45-5-622.

Unlawful transactions with children, 45-5-623.

Unlawful possession of intoxicating substance by children, 45-5-624.

Obscenity, 45-8-201.

Criminal possession of dangerous drugs, 45-9-102.

Minimum 30-day sentence for certain sexual abuse crimes, 46-18-201.

Emergency medical services, Title 50, ch. 6.

Living wills, Title 50, ch. 9.

41-3-103. Jurisdiction and venue. (1) In all matters arising under this chapter, the youth court shall have concurrent jurisdiction with the district court over:

(a) all youths who are within the state of Montana for any purpose;

(b) any youth or other person subject to this chapter who under a temporary or permanent order of the court has voluntarily or involuntarily removed himself from the state or the jurisdiction of the court; or

(c) any person who is alleged to have abused, neglected, or caused the dependency of a youth who is in the state of Montana for any purpose.

(2) Venue shall be determined pursuant to 41-5-204.

History: En. 10-1302 by Sec. 3, Ch. 328, L. 1974; R.C.M. 1947, 10-1302.

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

Child custody jurisdiction, 40-4-211.

Dispositional hearing, 41-3-406.

Priority of Youth Court hearings, 41-5-110.

Montana Youth Court — jurisdiction of the court, 41-5-203.

41-3-104. Renumbered 41-3-1122. Sec. 31, Ch. 465, L. 1983.

41-3-105. Renumbered 41-3-1125. Sec. 31, Ch. 465, L. 1983.

41-3-106. Prosecution of offenders. (1) If the evidence indicates violation of the criminal code, it shall be the responsibility of the county attorney to file appropriate charges against the alleged offender.

(2) District court shall have original jurisdiction under this section.

History: En. 10-1322 by Sec. 12, Ch. 328, L. 1974; R.C.M. 1947, 10-1322.

Cross-References

District Court — original jurisdiction, 3-5-302.

County Attorney — prosecutorial duties, 7-4-2712.

Incest, 45-5-507.

Nonsupport, 45-5-621.

Endangering the welfare of children, 45-5-622.

Sexual abuse of children, 45-5-625.

Criminal liability of parent or guardian for use of firearms by children under fourteen, 45-8-345.

Minimum 30-day sentence for certain sexual abuse crimes, 46-18-201.

41-3-107. Interagency cooperation. (1) To effectuate the purposes of this chapter, the department of family services shall cooperate with and shall seek the cooperation and involvement of all appropriate public and private agencies, including health, education, social services, and law enforcement agencies; juvenile courts; and any other agency, organization, or program providing or concerned with human services related to the prevention, identification, or treatment of child abuse or neglect. Such cooperation and involvement may not include joint case management but may include joint policy planning, public education, information services, staff development, and other training.

(2) The department shall enter into a cooperative agreement with other state agencies, as provided in 52-2-203, for the purpose of implementing this section.

History: En. Sec. 4, Ch. 543, L. 1979; amd. Sec. 12, Ch. 609, L. 1987; amd. Sec. 4, Ch. 655, L. 1991.

Cross-References

Board of Public Education — powers and duties, 20-2-121.

Montana Youth Court Act — declaration of purpose, 41-5-102.

General powers and duties of Department of Health and Environmental Sciences, 50-1-202.

Duties of Department of Family Services — child rehabilitation, 52-2-113.

Department of Family Services to assist other agencies, 52-2-116.

41-3-108. Child protective teams. The county attorney or the department of family services may convene one or more temporary or permanent interdisciplinary child protective teams. These teams may assist in assessing the needs of, formulating and monitoring a treatment plan for, and coordinating services to the child and his family. The supervisor of child protective services in a local service area or his designee shall serve as the team's coordinator. Members shall include:

(1) a social worker;

(2) a member of a local law enforcement agency;

(3) a representative of the medical profession;

(4) a county attorney; and

(5) if an Indian child or children are involved, someone, preferably an Indian person, knowledgeable about Indian culture and family matters.

History: En. Sec. 5, Ch. 543, L. 1979; amd. Sec. 37, Ch. 609, L. 1987; amd. Sec. 1, Ch. 67, L. 1989.

Cross-References

Educational goals and duties — recognition of Indian cultural heritage, Art. X, sec. 1(2), Mont. Const.

Disclosure of confidential child abuse records to child protective team, 41-3-205.

Duty to strengthen child welfare services, 52-2-112.

Department of Family Services — child rehabilitation, 52-2-113.

Part 2

Reports and Investigations

41-3-201. Reports. (1) When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that a child is abused or neglected, they shall report the matter promptly to the department of family services or its local affiliate, which then shall notify the county attorney of the county where the child resides.

(2) Professionals and officials required to report are:

(a) physician, resident, intern, or member of a hospital's staff engaged in the admission, examination, care, or treatment of persons;

(b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any other health or mental health professional;

(c) Christian Science practitioner and religious healers;

(d) school teachers, other school officials, and employees who work during regular school hours;

(e) a social worker, operator or employee of any registered or licensed day-care or substitute care facility, or any other operator or employee of a child-care facility;

(f) foster care, residential, or institutional worker;

(g) a peace officer or other law enforcement official; or

(h) clergy.

(3) Any person may make a report under this section if he knows or has reasonable cause to suspect that a child is abused or neglected.

(4) (a) Except as provided in subsection (4)(b) or (4)(c), a person listed in subsection (2) may not refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege.

(b) A clergyperson or priest is not required to make a report under this section if:

(i) the knowledge or suspicion of the abuse or neglect came from a statement or confession made to the clergyperson or priest in his capacity as a clergyperson or priest;

(ii) the statement was intended to be a part of a confidential communication between the clergyperson or priest and a member of his church or congregation; and

(iii) the person who made the statement or confession does not consent to the disclosure by the clergyperson or priest.

(c) A clergyperson or priest is not required to make a report under this section if the communication is required to be confidential by canon law, church doctrine, or established church practice.

(5) The reports referred to under this section shall contain:

(a) the names and addresses of the child and his or her parents or other persons responsible for his or her care;

(b) to the extent known, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries;

(c) any other information that the maker of the report believes might be helpful in establishing the cause of the injuries or showing the willful neglect and the identity of person or persons responsible therefor; and

(d) the facts which led the person reporting to believe that the child has suffered injury or injuries or willful neglect, within the meaning of this chapter.

History: **En. Sec. 2, Ch. 178, L. 1965; amd. Sec. 2, Ch. 292, L. 1973; Sec. 10-902, R.C.M. 1947; redes. 10-1304 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1304; amd. Sec. 6, Ch. 543, L. 1979; amd. Sec. 3, Ch. 511, L. 1981; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 1, Ch. 79, L. 1989; amd. Sec. 1, Ch. 785, L. 1991.**

Cross-References

Duties of teacher — nonpayment for failure to comply, 20-4-301.

Doctor-patient privilege, 26-1-805.

Adjudicatory hearing — temporary disposition, 41-3-404.

Department of Family Services to assist other agencies, 52-2-116.

Standards for day care, 52-2-731.

41-3-202. Action on reporting. (1) Upon receipt of a report as required by 41-3-201 that a child is or has been abused or neglected, a social worker or the county attorney or a peace officer shall promptly conduct a thorough investigation into the home of the child involved or any other place where the child is present, into the circumstances surrounding the injury of the child, and into all other nonfinancial matters which in the discretion of the investigator are relevant to the investigation. In conducting an investigation under this section, a social worker may not inquire into the financial status of the child's family or of any other person responsible for the child's care except as necessary to ascertain eligibility for federal assistance programs or to comply with the provisions of 41-3-406.

(2) The social worker is responsible for assessing the family and planning for the child. If the child is treated at a medical facility, the social worker, county attorney, or peace officer shall, consistent with reasonable medical practice, have the right of access to the child for interviews, photographs, and securing physical evidence and have the right of access to relevant hospital and medical records pertaining to the child. If considered appropriate by the social worker, county attorney, or peace officer conducting an interview of the child, an employee of the public school attended by the child involved may participate in any interview of the child if the child is enrolled in kindergarten through 8th grade.

(3) If from the investigation it appears that the child suffered abuse or neglect, the department shall provide protective services to the child and may provide protective services to any other child under the same care. The department will advise the county attorney of its investigation.

(4) The investigating social worker, within 60 days of commencing an investigation, shall also furnish a written report to the department. The department shall maintain a record system containing child abuse and neglect cases.

(5) Any person reporting abuse or neglect which involves acts or omissions on the part of a public or private residential institution, home, facility, or

agency shall be responsible for ensuring that the report is made to the department of family services, its local affiliate, and the county attorney of the county in which the facility is located.

History: En. Sec. 3, Ch. 178, L. 1965; amd. Sec. 3, Ch. 292, L. 1973; Sec. 10-903, R.C.M. 1947; redes. 10-1305 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1305; amd. Sec. 8, Ch. 543, L. 1979; amd. Sec. 3, Ch. 567, L. 1979; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 1, Ch. 126, L. 1989; amd. Sec. 1, Ch. 329, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 329 at end of (1) inserted "except as necessary to ascertain eligibility for federal assistance programs or to comply with the provisions of 41-3-406". Amendment effective April 13, 1993.

Cross-References

Remedy for parental abuse, 40-6-233.

Emergency protective service, 41-3-301.

Responsibility of providing protective services, 41-3-302.

Records and reports required of health care facilities — confidentiality, 50-5-106.

Child rehabilitation — duties of Department, 52-2-113.

41-3-203. Immunity from liability. Anyone investigating or reporting any incident of child abuse or neglect under 41-3-201 or 41-3-202, participating in resulting judicial proceedings, or furnishing hospital or medical records as required by 41-3-202 is immune from any liability, civil or criminal, that might otherwise be incurred or imposed, unless the person acted in bad faith or with malicious purpose. There is a rebuttable presumption that the person acted in good faith and with no malicious purpose.

History: En. Sec. 4, Ch. 178, L. 1965; Sec. 10-904, R.C.M. 1947; redes. 10-1306 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1306; amd. Sec. 9, Ch. 543, L. 1979; amd. Sec. 1, Ch. 181, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 181 near beginning of first sentence, after "neglect", inserted "under 41-3-201 or 41-3-202" and inserted second sentence creating rebuttable presumption of good faith. Amendment effective March 25, 1993.

Applicability: Section 2, Ch. 181, L. 1993, provided: "[This act] applies to reports made or records furnished after [the effective date of this act]." Effective March 25, 1993.

Cross-References

Immunity and responsibility of psychologist, physician, or health care facility, 41-1-407.

Records and reports required of health care facilities — confidentiality, 50-5-106.

41-3-204. Admissibility and preservation of evidence. (1) In any proceeding resulting from a report made pursuant to the provisions of this chapter or in any proceeding where the report or its contents are sought to be introduced into evidence, the report or its contents or any other fact related to the report or to the condition of the child who is the subject of the report shall not be excluded on the ground that the matter is or may be the subject of a privilege related to the examination or treatment of the child and granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803.

(2) Any person or official required to report under 41-3-201 may take or cause to be taken photographs of the area of trauma visible on a child who is the subject of a report. The cost of photographs taken under this section shall be paid by the department.

(3) When any person required to report under 41-3-201 finds visible evidence that a child has suffered abuse or neglect, he must include in his report either a written description or photographs of the evidence.

(4) A physician, either in the course of his providing medical care to a minor or after consultation with child protective services, the county attorney,

or a law enforcement officer may require x-rays to be taken when in his professional opinion there is a need for radiological evidence of suspected abuse or neglect. X-rays may be taken under this section without the permission of the parent or guardian. The cost of the x-rays ordered and taken under this section shall be paid by the county child protective service agency.

(5) All written, photographic, or radiological evidence gathered under this section shall be sent to the local affiliate of the department at the time the written confirmation report is sent or as soon thereafter as is possible.

History: En. Sec. 5, Ch. 178, L. 1965; Sec. 10-905, R.C.M. 1947; redes. 10-1307 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1307; amd. Sec. 10, Ch. 543, L. 1979; amd. Sec. 38, Ch. 609, L. 1987.

Cross-References

Contents of writings, recordings, and photographs, Art. X, M.R.Ev. (see Title 26, ch. 10).

Validity of consent of minor for health services, 41-1-402.

Responsibility of providing protective services, 41-3-302.

Evidence in cases involving sexual offenses, Title 46, ch. 15, part 4.

41-3-205. Confidentiality — disclosure exceptions. (1) The case records of the department of social and rehabilitation services, the department of family services and its local affiliate, the county welfare department, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Any person who permits or encourages the unauthorized dissemination of their contents is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records may also be disclosed to the following persons or entities in this state or any other state:

(a) a department, agency, or organization, including federal agencies, legally authorized to receive, inspect, or investigate reports of child abuse or neglect;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records;

(c) a licensed health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's guardian ad litem;

(f) the members of an interdisciplinary child protective team authorized under 41-3-108 for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(g) a department or agency investigating an applicant for a license to operate a youth care facility, day-care facility, or child-placing agency if the investigation is based on a substantiated report and the applicant is notified of the investigation;

(h) an employee of the department if disclosure of the records is necessary for administration of programs designed to benefit the child;

(i) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(j) a youth probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(k) a county attorney or peace officer if disclosure is necessary for the investigation or prosecution of a case involving child abuse or neglect;

(l) a foster care review committee established under 41-3-1115 or, when applicable, a local citizen review board established under Title 41, chapter 3, part 10;

(m) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer as provided in 41-3-202;

(n) a member of a county interdisciplinary child information team formed under 52-2-211 who is not listed in subsection (3); or

(o) members of a local interagency staffing group provided for in 52-2-203.

(4) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a).

(5) Nothing in this section is intended to affect the confidentiality of criminal court records or records of law enforcement agencies.

History: En. 10-1308 by Sec. 4, Ch. 328, L. 1974; R.C.M. 1947, 10-1308; amd. Sec. 11, Ch. 543, L. 1979; amd. Sec. 1, Ch. 287, L. 1987; amd. Sec. 39, Ch. 609, L. 1987; amd. Sec. 1, Ch. 110, L. 1989; amd. Sec. 2, Ch. 126, L. 1989; amd. Sec. 2, Ch. 510, L. 1991; amd. Sec. 5, Ch. 655, L. 1991; amd. Sec. 15, Ch. 610, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 610 in (3)(1), after "41-3-1115", inserted "or, when applicable, a local citizen review board established under Title 41, chapter 3, part 10"; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Doctor-patient privilege, 26-1-805.

Confidential communications by student to employee of educational institution, 26-1-809.

Child protective teams, 41-3-108.

Foster Care Review Committee, 41-3-1115.

Youth Court — preliminary investigation and disposition, 41-5-301.

Youth Court — confidentiality of proceedings — records, Title 41, ch. 5, part 6.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

Misdemeanor — no penalty specified, 46-18-212.

41-3-206. Procedure in case of child's death. (1) Any person or official required to report by law who has reasonable cause to suspect that a child has died as a result of child abuse or neglect shall report his suspicion to the appropriate medical examiner or law enforcement officer. Any other person who has reasonable cause to suspect that a child has died as a result of child abuse or neglect may report his suspicion to the appropriate medical examiner or law enforcement officer.

(2) The medical examiner or coroner shall investigate the report and submit his findings, in writing, to the local law enforcement agency, the

appropriate county attorney, the local child protective service, and, if the person making the report is a physician, the physician.

History: En. Sec. 7, Ch. 543, L. 1979.

Cross-References

Homicide, Title 45, ch. 5, part 1.

41-3-207. Penalty for failure to report. (1) Any person, official, or institution required by law to report known or suspected child abuse or neglect who fails to do so or who prevents another person from reasonably doing so is civilly liable for the damages proximately caused by such failure or prevention.

(2) Any person or official required by law to report known or suspected child abuse or neglect who purposely or knowingly fails to report known child abuse or neglect or purposely or knowingly prevents another person from doing so is guilty of a misdemeanor.

History: En. Sec. 15, Ch. 543, L. 1979; amd. Sec. 1, Ch. 367, L. 1985.

Cross-References

Damages, Title 27, ch. 1, part 2.

Measure of damages, Title 27, ch. 1, part 3.

Liability for negligence as well as willful acts, 27-1-701.

Misdemeanor — no penalty specified, 46-18-212.

41-3-208. Rulemaking authority. (1) The department of family services shall adopt rules to govern the procedures used by department personnel in preparing and processing reports and in making investigations authorized by this chapter.

(2) The department may adopt rules to govern the disclosure of case records containing reports of child abuse and neglect.

History: En. Sec. 1, Ch. 567, L. 1979; amd. Sec. 31, Ch. 465, L. 1983; amd. Sec. 2, Ch. 287, L. 1987; amd. Sec. 40, Ch. 609, L. 1987; amd. Sec. 7, Ch. 696, L. 1991.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 3

Protective Care

Part Cross-References

Establishment of youth guidance center, 7-16-2102 through 7-16-2104.

41-3-301. Emergency protective service. (1) Any child protective social worker of the department of family services, a peace officer, or the county attorney who has reason to believe any youth is in immediate or apparent danger of harm may immediately remove the youth and place him in a protective facility. The department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having legal custody of the youth at the time the placement is made or as soon thereafter as possible.

(2) No child who has been removed from his home or any other place for his protection or care may be placed in a jail.

(3) A petition shall be filed within 48 hours of emergency placement of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents.

(4) The department of family services shall make such necessary arrangements for the youth's well-being as are required prior to the court hearing.

History: En. 10-1309 by Sec. 5, Ch. 328, L. 1974; amd. Sec. 19, Ch. 100, L. 1977; R.C.M. 1947, 10-1309; amd. Sec. 12, Ch. 543, L. 1979; amd. Sec. 1, Ch. 659, L. 1985; amd. Sec. 41, Ch. 609, L. 1987.

Cross-References

Remedy for parental abuse, 40-6-233.

Declaration of policy, 41-3-101.

Action on reporting, 41-3-202.

Abuse, neglect, and dependency petitions, 41-3-401.

Foster homes and other private institutions, Title 41, ch. 3, part 5.

Taking into custody, 41-5-314.

41-3-302. Responsibility of providing protective services. (1) The department of family services shall have the primary responsibility to provide the protective services authorized by this chapter and shall have the authority pursuant to this chapter to take temporary or permanent custody of a child when ordered to do so by the court, including the right to give consent to adoption.

(2) The department shall respond to emergency reports of known or suspected child abuse or neglect 24 hours a day, 7 days a week.

History: En. 10-1315 by Sec. 11, Ch. 328, L. 1974; R.C.M. 1947, 10-1315; amd. Sec. 13, Ch. 543, L. 1979; amd. Sec. 4, Ch. 511, L. 1981; amd. Sec. 42, Ch. 609, L. 1987.

Cross-References

Remedy for parental abuse, 40-6-233.

When parental authority ceases, 40-6-234.

Action on reporting, 41-3-202.

Order for immediate protection of youth, 41-3-403.

Taking into custody, 41-5-314.

Child rehabilitation — duties of Department, 52-2-113.

County departments of public welfare, Title 53, ch. 2, part 3.

41-3-303. Guardian ad litem. (1) In every judicial proceeding, the court shall appoint for any child alleged to be abused or neglected a guardian ad litem. The department or any of its staff may not be appointed as the guardian ad litem in a judicial proceeding under this title. When necessary the guardian ad litem may serve at public expense.

(2) The guardian ad litem is charged with the representation of the child's interests. The guardian ad litem has the following general duties:

(a) to conduct investigations that the guardian ad litem considers necessary to ascertain the facts constituting the alleged abuse or neglect;

(b) to interview or observe the child who is the subject of the proceeding;

(c) to have access to court, medical, psychological, law enforcement, social services, and school records pertaining to the child and the child's siblings and parents or custodians;

(d) to make written reports to the court concerning the child's welfare;

(e) to appear and participate in all proceedings to the degree necessary to adequately represent the child and make recommendations to the court concerning the child's welfare; and

(f) to perform other duties as directed by the court.

History: En. Sec. 14, Ch. 543, L. 1979; amd. Sec. 1, Ch. 384, L. 1985; amd. Sec. 4, Ch. 434, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 434 in (1) inserted second sentence precluding appointment of the Department or its staff as guardian ad litem; and made minor changes in style. Amendment effective April 21, 1993.

Cross-References

Guardian ad litem, 25-5-301.

Representation of child, 40-4-205.

When parental authority ceases, 40-6-234.

Enforcement of minor's rights, 41-1-202.

Guardian ad litem defined, 41-3-603.

Appointment of guardian ad litem, 41-5-512.

Guardians of minors, Title 72, ch. 5, part 2.

Part 4

Abuse, Neglect, or Dependency Proceedings

41-3-401. Abuse, neglect, and dependency petitions. (1) The county attorney, attorney general, or an attorney hired by the county welfare department or office of human services shall be responsible for filing all petitions alleging abuse, neglect, or dependency. The county attorney or attorney general, or an attorney hired by the county welfare department or office of human services with the written consent of the county attorney or attorney general, may require all state, county, and municipal agencies, including law enforcement agencies, to conduct such investigations and furnish such reports as may be necessary.

(2) Upon receipt of a petition, the court shall set a date for an adjudicatory hearing on the petition. Such petitions shall be given preference by the court in setting hearing dates.

(3) A petition alleging abuse, neglect, or dependency is a civil action brought in the name of the state of Montana. The rules of civil procedure shall apply except as herein modified. Proceedings under a petition are not a bar to criminal prosecution.

(4) The parents or parent, guardian, or other person or agency having legal custody of the youth named in the petition, if residing in the state, shall be served personally with a copy of the petition and summons at least 5 days prior to the date set for hearing. If such person or agency cannot be served personally, the person or agency may be served by publication in the manner provided by the Montana Rules of Civil Procedure for other types of proceedings.

(5) In the event personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party where in the opinion of the court the interests of justice require.

(6) If a parent of the child is a minor, notice shall be given to the minor parent's parents or guardian, and if there is no guardian the court shall appoint one.

(7) Any person interested in any cause under this chapter has the right to appear.

(8) Except where the proceeding is instituted or commenced at the request of the department of family services, a citation shall be issued and served upon a representative of the department prior to the court hearing.

(9) The petition shall:

(a) state the nature of the alleged abuse, neglect, or dependency;

(b) state the full name, age, and address of the youth and the name and address of his parents or guardian or person having legal custody of the youth;

(c) state the names, addresses, and relationship to the youth of all persons who are necessary parties to the action.

(10) The petition may ask for the following relief:

(a) temporary investigative authority and protective services;

(b) temporary legal custody;

(c) termination of the parent-child legal relationship and permanent legal custody with the right to consent to adoption;

(d) any combination of the above or such other relief as may be required for the best interest of the youth.

(11) The petition may be modified for different relief at any time within the discretion of the court.

(12) The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party.

History: En. 10-1310 by Sec. 6, Ch. 328, L. 1974; amd. Sec. 20, Ch. 100, L. 1977; R.C.M. 1947, 10-1310; amd. Sec. 4, Ch. 567, L. 1979; amd. Sec. 5, Ch. 511, L. 1981; amd. Sec. 2, Ch. 659, L. 1985; amd. Sec. 2, Ch. 463, L. 1987; amd. Sec. 43, Ch. 609, L. 1987; amd. Sec. 2, Ch. 329, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 329 in (1) deleted former last sentence that read: "Investigations as to financial status may not be made prior to the adjudicatory hearing provided for in 41-3-404." Amendment effective April 13, 1993.

Cross-References

Rules concerning time, Title 1, ch. 1, part 3; Rule 6, M.R.Civ.P. (see Title 25, ch. 20).

Duties of Attorney General, 2-15-501.

Guardian ad litem — appointment, 25-5-301.

Montana Rules of Civil Procedure, Title 25, ch. 20.

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Representation of child, 40-4-205.

Best interest of child, 40-4-212, 40-6-130.

Consent required for adoption, 40-8-111.

Enforcement of minor's rights, 41-1-202.

Prosecution of offenders — abuse, neglect, dependency, 41-3-106.

Action on reporting, 41-3-202.

Parent-child legal relationship termination, Title 41, ch. 3, part 6.

Appointment of guardian ad litem, 41-5-512.

Child rehabilitation — duties of Department, 52-2-113.

State assumption of county public assistance programs, Title 53, ch. 2, part 8.

Guardians of minors, Title 72, ch. 5, part 2.

41-3-402. Petition for temporary investigative authority and protective services. (1) In cases where it appears that a youth is abused or neglected or is in danger of being abused or neglected, the county attorney, attorney general, or an attorney hired by the county welfare department or office of human services may file a petition for temporary investigative authority and protective services.

(2) A petition for temporary investigative authority and protective services shall state the specific authority requested and the facts establishing probable cause that a youth is abused or neglected or is in danger of being abused or neglected.

(3) The petition for temporary investigative authority and protective services shall be supported by an affidavit signed by the county attorney, attorney general, or an attorney hired by the county welfare department or office of human services or a department of family services report stating in detail the facts upon which the request is based.

History: En. 10-1311 by Sec. 7, Ch. 328, L. 1974; amd. Sec. 21, Ch. 100, L. 1977; R.C.M. 1947, 10-1311(1) thru (3); amd. Sec. 3, Ch. 659, L. 1985; amd. Sec. 44, Ch. 609, L. 1987.

Cross-References

Duties of Attorney General, 2-15-501.

Affidavits, Title 26, ch. 1, part 10.

Action on reporting, 41-3-202.

State assumption of county public assistance programs, Title 53, ch. 2, part 8.

41-3-403. Order for immediate protection of youth. (1) (a) Upon the filing of a petition for temporary investigative authority and protective services, the court may issue an order granting relief that may be required for the immediate protection of the youth.

(b) The order, along with the petition and supporting documents, must be served by a peace officer or a representative of the department on the person or persons named in the order. When the youth is placed in a medical facility or protective facility, the department shall notify the parents or parent, guardian, or other person having legal custody of the youth, at the time the placement is made or as soon after placement as possible.

(c) The order must require the person served to comply immediately with the terms of the order or to appear before the court issuing the order on the date specified and show cause why the person has not complied with the order. The show cause hearing must be conducted within 20 days of the issuance of the order by the judge or a master appointed by the judge. The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of the order. Except as otherwise provided in this part, the rules of civil procedure apply. Hearsay evidence of statements made by the affected youth is admissible at the hearing.

(d) Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary legal custody of the youth with the department until further order.

(2) The court may grant the following kinds of relief:

(a) right of entry by a peace officer or department worker;

(b) medical and psychological evaluation of the youth or parents, guardians, or person having legal custody;

(c) requirement that the youth, parents, guardians, or person having legal custody receive counseling services;

(d) placement of the youth in a temporary medical facility or a facility for protection of the youth;

(e) requirement that the parents, guardian, or other person having custody furnish services that the court may designate;

(f) inquiry into the financial ability of the parents, guardian, or other person having custody of the youth to contribute to the costs for the care, custody, and treatment of the youth and requirement of a contribution for those costs pursuant to the requirements of 41-3-406(3) through (6);

(g) other temporary disposition that may be required in the best interest of the youth that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

History: En. 10-1311 by Sec. 7, Ch. 328, L. 1974; amd. Sec. 21, Ch. 100, L. 1977; R.C.M. 1947, 10-1311(4), (5); amd. Sec. 4, Ch. 659, L. 1985; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 1, Ch. 696, L. 1991; amd. Sec. 1, Ch. 112, L. 1993; amd. Sec. 1, Ch. 362, L. 1993.

Compiler's Comments

1993 Amendments — Composite Section: Chapter 112 at end of (1)(c) inserted "Hearsay evidence of statements made by the affected youth is admissible at the hearing"; and made minor changes in style.

Chapter 362 in (2)(g), at end after "youth", inserted "that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined"; and made minor changes in style. Amendment effective April 16, 1993.

In the phrase "Except as otherwise provided herein", Ch. 112, near end of (1)(c) changed "herein" to "in this part" and Ch. 362 changed "herein" to "in this section". The codifier used "in this part" because it is the broader reference.

Cross-References

Rules concerning time, Title 1, ch. 1, part 3; Rule 6, M.R.Civ.P. (see Title 25, ch. 20).

Contempts, Title 3, ch. 1, part 5.

Montana Rules of Civil Procedure, Title 25, ch. 20.

Masters, Rule 53, M.R.Civ.P. (see Title 25, ch. 20).

Best interests of child, 40-4-212, 40-6-130.

Remedy for parental abuse, 40-6-233.

Psychiatric or psychological counseling under urgent circumstances, 41-1-406.

Action on reporting, 41-3-202.

Responsibility of providing protective services, 41-3-302.

Taking into custody, 41-5-314.

Child rehabilitation — duties of Department, 52-2-113.

Department to accept custody of children committed by courts, 52-2-115.

41-3-404. Adjudicatory hearing — temporary disposition. (1) In the adjudicatory hearing on a petition under 41-3-401, the court shall determine whether the youth is a youth in need of care and ascertain, as far as possible, the cause.

(2) The court shall hear evidence regarding the residence of the youth, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the youth.

(3) In all civil and criminal proceedings relating to abuse, neglect, or dependency, none of the privileges related to the examination or treatment of the child and granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803, apply.

(4) (a) If the court determines that the youth is not an abused, neglected, or dependent child, the petition shall be dismissed and any order made pursuant to 41-3-403 shall be vacated.

(b) If the court determines that the youth is an abused, neglected, or dependent child, the court shall set a date for a dispositional hearing to be conducted within 30 days and order any necessary or required investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-403(2).

History: En. 10-1312 by Sec. 8, Ch. 328, L. 1974; R.C.M. 1947, 10-1312; amd. Sec. 19, Ch. 543, L. 1979; amd. Sec. 5, Ch. 567, L. 1979; amd. Sec. 5, Ch. 659, L. 1985.

Cross-References

Rules concerning time, Title 1, ch. 1, part 3; Rule 6, M.R.Civ.P. (see Title 25, ch. 20).

When parent may bring action for the exclusive control of children — decree, 40-6-223.

Remedy for parental abuse, 40-6-233.

Admissibility and preservation of evidence, 41-3-204.

Payment for support of youth in need of care — reimbursement by county, 41-3-1122.

Evidence in cases involving sexual offenses, Title 46, ch. 15, part 4.

41-3-405. Combined with 41-5-805, renumbered 41-3-1123. Sec. 31, Ch. 465, L. 1983.

41-3-406. Dispositional hearing — contributions by parents or guardians for youth's care. (1) If a youth is found to be a youth in need of care under 41-3-404, the court may enter its judgment, making any of the following dispositions to protect the welfare of the youth:

(a) permit the youth to remain with the youth's parents or guardian, subject to those conditions and limitations the court may prescribe;

(b) grant an order of limited emancipation to a youth who is 16 years of age or older as provided in 41-3-408;

(c) transfer legal custody to any of the following:

(i) the department;

(ii) a child-placing agency that is willing and able to assume responsibility for the education, care, and maintenance of the youth and that is licensed or otherwise authorized by law to receive and provide care of the youth; or

(iii) a relative or other individual who, after study by a social service agency designated by the court, is found by the court to be qualified to receive and care for the youth;

(d) order any party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(e) order further care and treatment as the court considers in the best interest of the youth that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(2) If the youth is transferred to the custody of the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, custody, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(3) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (2), the court shall order the youth's parents or guardians to pay an amount based on the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant to 40-5-209.

(4) (a) Except as provided in subsection (4)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for a contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds that there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the child; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(5) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under subsection (3).

(6) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of social and rehabilitation services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of social and rehabilitation services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4.

History: En. 10-1314 by Sec. 10, Ch. 328, L. 1974; R.C.M. 1947, 10-1314; amd. Sec. 7, Ch. 567, L. 1979; amd. Sec. 170, Ch. 575, L. 1981; amd. Sec. 3, Ch. 564, L. 1983; amd. Sec. 6, Ch. 659, L. 1985; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 2, Ch. 696, L. 1991; amd. Sec. 2, Ch. 362, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 362 in (1)(d), at end after "counseling", and in (1)(e), at end after "youth", inserted "that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined"; and made minor changes in style. Amendment effective April 16, 1993.

Cross-References

Remedy for parental abuse, 40-6-233.

When parental authority ceases, 40-6-234.

Jurisdiction and venue, 41-3-103.

Responsibility of providing protective services, 41-3-302.

Priority of Youth Court hearings, 41-5-110.

Endangering the welfare of children, 45-5-622.

Department to accept custody of children committed by courts, 52-2-115.

Guardians of minors, Title 72, ch. 5, part 2.

41-3-407. Combined with 41-5-806, renumbered 41-3-1124. Sec. 31, Ch. 465, L. 1983.

41-3-408. Limited emancipation. (1) The court, after the dispositional hearing provided for in 41-3-406, may, upon the request of a youth who is 16 years of age or older, enter an order granting limited emancipation to the youth.

(2) Limited emancipation may be granted only if the court has found:

(a) that limited emancipation is in the youth's best interests;

(b) that the youth desires limited emancipation;

(c) that there exists no public interest compelling denial of limited emancipation;

(d) that the youth has, or will reasonably obtain, money sufficient to pay for financial obligations incurred as a result of limited emancipation;

(e) that the youth, as shown by prior conduct and preparation, understands and may be expected to responsibly exercise those rights and responsibilities incurred as a result of limited emancipation;

(f) that the youth has graduated or will continue to diligently pursue graduation from high school, unless circumstances clearly compel deferral of education; and

(g) that the youth will undergo periodic counseling with an appropriate advisor.

(3) An order of limited emancipation must specifically set forth the rights and responsibilities that are being conferred upon the youth. These may include but are not limited to one or more of the following:

(a) the right to live independently of in-house supervision;

(b) the right to live in housing of the youth's choice;

(c) the right to directly receive and expend money to which the youth is entitled and to conduct his own financial affairs;

(d) the right to enter into contractual agreements and incur debts;

(e) the right to obtain access to medical treatment and records upon the youth's own authorization; and

(f) the right to obtain a license to operate equipment or perform a service.

(4) An order of limited emancipation must include a provision requiring that the youth make periodic reports to the court upon terms prescribed by the court.

(5) If the court determines that a youth to whom limited emancipation is granted does not have sufficient funds to finance transition to limited emancipated status, the court may order the department to provide such funds, not to exceed $500, directly to the youth. The youth shall account to the court for the disposition of such funds and shall repay all such money to the department within 1 year of the order of limited emancipation unless the court for cause orders an extension.

(6) The court, on its own motion or on the motion of any parties to the dispositional hearing, may modify or revoke the order upon a showing that:

(a) the youth has committed a material violation of the law;

(b) the youth is failing to diligently pursue graduation from high school;

(c) the youth has violated a condition of the limited emancipation order;

(d) the best interests of the youth are no longer served by limited emancipation; or

(e) the youth has discontinued periodic counseling with approved advisors.

(7) The department shall mail a copy of this part to all high school counseling offices.

History: En. Sec. 5, Ch. 564, L. 1983; amd. Sec. 8, Ch. 696, L. 1991.

Cross-References

Schools — compulsory attendance and excuses, 20-5-103.

Obligations of parents, Title 40, ch. 6, part 2.

Minor cannot disaffirm certain obligations, 41-1-306.

Validity of consent to medical treatment, Title 41, ch. 1, part 4.

Definitions — limited emancipation, 41-3-102.

41-3-409. Appeals. Appeals of court orders or decrees made under this part shall be given precedence on the calendar of the supreme court over all other matters, unless otherwise provided by law. An appeal does not stay the order or decree appealed from; however, the supreme court may order a stay upon application and hearing if suitable provision is made for the care and custody of the child.

History: En. Sec. 3, Ch. 463, L. 1987.

Cross-References

Montana Rules of Appellate Procedure, Title 25, ch. 21.

41-3-410. Length of time in foster care — permanent disposition. The court may terminate parental rights under 41-3-609(2) or order other permanent legal custody that will provide for the permanent placement of the child when legal custody of a youth has been transferred to the department under this part and:

(1) the child has been in an out-of-home placement for a cumulative total period of 1 year or longer pursuant to court order and the parent has substantially neglected or willfully refused to remedy the circumstances that cause the child to be in an out-of-home placement; or

(2) the child has been in an out-of-home placement for a cumulative total period of 2 years or longer pursuant to court order, the parent has been unable to remedy the circumstances that cause the child to be in an out-of-home placement, and there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future.

History: En. Sec. 1, Ch. 599, L. 1991.

Part 5

Foster Homes and Other Private Institutions (Renumbered by Sec. 31, Ch. 465, L. 1983)

Part Compiler's Comments

Renumbered Sections:

41-3-501. Renumbered 41-3-1102(3), (4). Sec. 31, Ch. 465, L. 1983.

41-3-502. Renumbered 41-3-1141. Sec. 31, Ch. 465, L. 1983.

41-3-503. Renumbered 41-3-1142. Sec. 31, Ch. 465, L. 1983.

41-3-504. Renumbered 41-3-1143. Sec. 31, Ch. 465, L. 1983.

Part 6

Parent-Child Legal Relationship Termination

Part Cross-References

Relinquishment of parental rights, 40-6-135.

Adoption — effect of final decree, 40-8-125.

41-3-601. Short title. This part may be cited as the "Parent-Child Legal Relationship Termination Act of 1981".

History: En. Sec. 1, Ch. 420, L. 1981.

41-3-602. Purpose. This part provides procedures and criteria by which the parent-child legal relationship may be terminated by a court if the relationship is not in the best interest of the child. The termination of the parent-child legal relationship provided for in this part is to be used in those situations where there is a determination that a child is abused, neglected, or dependent, as defined in 41-3-102.

History: En. Sec. 2, Ch. 420, L. 1981.

Cross-References

Best interest of child, 40-4-212.

41-3-603. Definitions. As used in this part, unless the context otherwise requires, the following definitions apply:

(1) "Guardian ad litem" means a person appointed to represent a child who is the subject of a petition for the termination of the parent-child legal relationship.

(2) "Parent-child legal relationship" means the legal relationship that exists between a child and his birth or adoptive parents as provided in Title 40, chapter 6, part 2, unless that relationship has been terminated by competent judicial decree as provided in this part or in 40-6-135 or in 40-6-234.

(3) "Treatment plan" means a written agreement between the department or court and the parents that includes action that must be taken to resolve the condition or conduct of the parents that resulted in the need for protective services for the child. The treatment plan may involve other parties, if necessary, for protective services.

(4) "Youth in need of care" means a youth who is dependent, abused, or neglected as defined in 41-3-102.

History: En. Sec. 3, Ch. 420, L. 1981; amd. Sec. 1, Ch. 1, L. 1983; amd. Sec. 1, Ch. 388, L. 1985.

Cross-References

Guardian ad litem, Title 25, ch. 5, part 3; 41-3-303.

Enforcement of minor's rights, 41-1-202.

41-3-604 through 41-3-606 reserved.

41-3-607. Petition for termination — separate hearing — right to counsel — no jury trial. (1) The termination of a parent-child legal relationship shall be considered only after the filing of a petition pursuant to 41-3-401 alleging the factual grounds for termination. Termination of a parent-child legal relationship shall be considered at a dispositional hearing held pursuant to 41-3-406, following or together with an adjudicatory hearing held pursuant to 41-3-404, within 180 days after the filing of the petition.

(2) After the county attorney, attorney general, or an attorney hired by the county welfare department or office of human services files a petition for termination of a parent-child relationship pursuant to this part, parents shall be advised of the right to counsel, and counsel shall be appointed in accordance with 41-3-401(12).

(3) A guardian ad litem shall be appointed to represent the child's best interests in any hearing determining the involuntary termination of the

parent-child legal relationship. The guardian ad litem shall continue to represent the child until the child is returned home or placed in an appropriate permanent placement. If a respondent parent is a minor, a guardian ad litem must be appointed to serve the minor parent in addition to any counsel requested by the parent.

(4) There is no right to a jury trial at proceedings held to consider the termination of a parent-child legal relationship.

History: **En. Sec. 4, Ch. 420, L. 1981; amd. Sec. 2, Ch. 388, L. 1985.**

Cross-References

Trial by jury, Art. II, sec. 26, Mont. Const.

Rules concerning time, Title 1, ch. 1, part 3; Rule 6, M.R.Civ.P. (see Title 25, ch. 20).

Duties of Attorney General, 2-15-501.

Guardian ad litem, Title 25, ch. 5, part 3.

Trial by jury, Rule 39, M.R.Civ.P. (see Title 25, ch. 20).

State assumption of county public assistance programs, Title 53, ch. 2, part 8.

41-3-608. Notice. Before a termination of the parent-child legal relationship based on abandonment may be ordered, the court shall determine whether the rules of civil procedure relating to service of process on the parents have been followed. If the parents were not served personally, the petitioner must file an affidavit stating what efforts have been made to locate the parent or parents of the child. The affidavit must be filed at least 10 days prior to the hearing.

History: **En. Sec. 5, Ch. 420, L. 1981.**

Cross-References

Service of process and other papers, Title 25, ch. 3.

Service, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

41-3-609. Criteria for termination. (1) The court may order a termination of the parent-child legal relationship upon a finding that any of the following circumstances exist:

(a) the parents have relinquished the child pursuant to 40-6-135;

(b) the child has been abandoned by his parents as set forth in 41-3-102(8)(d);

(c) the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time; or

(d) the parent has failed to successfully complete a treatment plan approved by the court within the time periods allowed for the child to be in foster care under 41-3-410 unless it orders other permanent legal custody under 41-3-410.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court must enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making such determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) a single incident of life-threatening or gravely disabling injury to or disfigurement of the child caused by the parent;

(d) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child;

(e) present judicially ordered long-term confinement of the parent;

(f) the injury or death of a sibling due to proven parental abuse or neglect; and

(g) any reasonable efforts by protective service agencies that have been unable to rehabilitate the parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The court shall review and, if necessary, order an evaluation of the child's or the parent's physical, mental, and emotional conditions.

(4) A treatment plan is not required under this part upon a finding by the court following hearing if:

(a) two medical doctors submit testimony that the parent is so severely mentally ill that such person cannot assume the role of parent;

(b) the parent is incarcerated for more than 1 year and such treatment plan is not practical considering the incarceration; or

(c) the death of a sibling caused by abuse or neglect by the parent has occurred.

History: **En. Sec. 6, Ch. 420, L. 1981; amd. Sec. 7, Ch. 15, L. 1985; amd. Sec. 3, Ch. 388, L. 1985; amd. Sec. 2, Ch. 599, L. 1991; amd. Sec. 3, Ch. 439, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 439 at end of (1)(b) substituted reference to 41-3-102(8)(d) for reference to 41-3-102(7)(d).

Cross-References

Best interest of child, 40-4-212.

UPA — grounds for termination of father's rights, 40-6-129.

Treatment of mentally ill, Title 53, ch. 21.

41-3-610. Review following termination. (1) At the conclusion of a hearing in which the court orders termination of the parent-child legal relationship, the court shall order that a review hearing be held within 180 days following the date of the termination to determine if the child has been permanently placed.

(2) At the review hearing, the agency or individual vested with the custody of the child shall report to the court whether the plan for permanent placement of the child has been accomplished. If the child is not in a permanent placement at the time of the review hearing, the guardian ad litem shall submit to the court a written report with recommendations, based upon an independent investigation, for disposition meeting the best interests of the child.

(3) The court may order the agency or individual vested with custody of the child to report, at appropriate intervals, on the status of the child until the plan for permanent placement of the child has been accomplished.

History: **En. Sec. 7, Ch. 420, L. 1981; amd. Sec. 4, Ch. 388, L. 1985.**

41-3-611. Effect of decree. (1) An order for the termination of the parent-child legal relationship divests the child and the parents of all legal rights, powers, immunities, duties, and obligations with respect to each other as provided in Title 40, chapter 6, part 2, except the right of the child to inherit from the parent.

(2) An order or decree entered pursuant to this part may not disentitle a child to any benefit due him from any third person, including but not limited to any Indian tribe, agency, state, or the United States.

(3) After the termination of a parent-child legal relationship, the former parent is neither entitled to any notice of proceedings for the adoption of the child nor has any right to object to the adoption or to participate in any other placement proceedings held pursuant to 41-3-610.

History: **En. Sec. 8, Ch. 420, L. 1981; amd. Sec. 99, Ch. 370, L. 1987.**

Cross-References

Consent required for adoption, 40-8-111.

Intestate succession, Title 72, ch. 2, part 1.

41-3-612. Appeals. Appeals of court orders or decrees made under this part shall be given precedence on the calendar of the supreme court over all other matters, unless otherwise provided by law.

History: **En. Sec. 9, Ch. 420, L. 1981.**

Cross-References

Montana Rules of Appellate Procedure, Title 25, ch. 21.

Priority of Youth Court hearings, 41-5-110.

Part 7

Montana Children's Trust Fund

Part Cross-References

Montana children's trust fund board, 2-15-2402.

Income tax deduction for contribution to state child abuse and neglect prevention program, 15-30-155.

41-3-701. Child abuse and neglect prevention program. (1) The Montana children's trust fund board, provided for in 2-15-2402, shall use the money in the children's trust fund account established by 41-3-702 to fund services and activities operated by nonprofit private or public community-based educational and service organizations, which services and activities relate solely to the prevention of child abuse and neglect.

(2) In administering the child abuse and neglect prevention program, the board shall:

(a) develop a state plan, priorities for funded services and activities, and criteria for the receipt of program funds;

(b) monitor the expenditure of funds by organizations receiving funds under this section;

(c) evaluate the effectiveness of services and activities funded under this section; and

(d) adopt rules necessary to implement this section and 41-3-703 and 41-3-704.

History: **En. Sec. 3, Ch. 610, L. 1985.**

41-3-702. Children's trust fund account — nonsupplantation of funds. (1) There is a children's trust fund account in the state special revenue fund in the state treasury. The money in the account is allocated to the Montana children's trust fund board, provided for in 2-15-2402, for funding services and activities under and payment of administrative costs of the child abuse and neglect prevention program provided for in 41-3-701.

(2) Funds deposited in the children's trust fund account may be used only for the program authorized in 41-3-701 and may not be used to pay the expenses of any other program or service administered in whole or in part by the department of family services.

History: (1)En. Sec. 1, Ch. 610, L. 1985; (2)En. Sec. 6, Ch. 610, L. 1985; amd. Sec. 11, Ch. 609, L. 1987.

Cross-References

Fund structure, 17-2-102.

41-3-703. Gifts and grants to program. The Montana children's trust fund board may accept contributions, gifts, and grants, in money or otherwise, to the child abuse and neglect prevention program. Monetary gifts, contributions, and grants must, upon receipt, be paid into the children's trust fund account established by 41-3-702.

History: En. Sec. 4, Ch. 610, L. 1985.

41-3-704. Program costs. The costs incurred by the Montana children's trust fund board in administering the child abuse and neglect prevention program must be paid for with money from the children's trust fund account established by 41-3-702. The board shall keep costs to a minimum and use existing office space, personnel, equipment, and supplies of the department of family services to the extent possible.

History: En. Sec. 5, Ch. 610, L. 1985; amd. Sec. 11, Ch. 609, L. 1987.

Parts 8 and 9 reserved

Part 10

Local Citizen Review Board Pilot Program Act

Part Compiler's Comments

Effective Date: Section 19, Ch. 610, L. 1993, provided: "[This act] [41-3-205, 41-3-1001 through 41-3-1014, 41-3-1115, and 41-3-1122] is effective July 1, 1993."

41-3-1001. Short title. This part may be cited as the "Local Citizen Review Board Pilot Program Act".

History: En. Sec. 1, Ch. 610, L. 1993.

41-3-1002. Establishment of pilot program. (1) The office of the supreme court administrator shall solicit written indication of interest from each youth court judge interested in having a local citizen review board established pursuant to this part within the jurisdiction of the youth court.

(2) (a) There is a local citizen review board screening committee. The committee is composed of the following members:

(i) a member of the house of representatives, designated by the speaker of the house;

(ii) a member of the senate, designated by the president of the senate;

(iii) a representative of the Montana judges' association, designated by the association; and

(iv) a representative of the office of the supreme court administrator, designated by the chief justice of the supreme court.

(b) The members designated pursuant to subsections (2)(a)(i) and (2)(a)(ii) must be from different political parties.

(3) The committee shall meet at a time agreeable to its members, and the members shall serve without additional compensation.

(4) The committee shall review the responses of youth court judges received pursuant to subsection (1) and shall designate judicial districts to operate a local citizen review board pilot program from among those courts expressing an interest in the program.

History: **En. Sec. 2, Ch. 610, L. 1993.**

41-3-1003. Establishment of local citizen review board — membership. (1) Subject to the availability of funds, the youth court judge of a district designated pursuant to 41-3-1002 to operate a pilot program shall establish a local citizen review board in the judicial district to review the case of each child assigned to foster care by the youth court of the judicial district, as provided in Title 41, chapter 5.

(2) A local citizen review board is composed of at least three and not more than five members appointed by the youth court judge of a judicial district designated pursuant to 41-3-1002. Each member appointed must be sworn in by a judge of the judicial district to which the member is appointed to serve.

(3) The youth court judge of a judicial district designated pursuant to 41-3-1002 shall appoint the local citizen review board according to the following guidelines:

(a) Members of a local citizen review board must be recruited from groups with special knowledge of or interest in foster care and child welfare, which may include but is not limited to adoptive parents and members of the professions of law, medicine, psychology, social work, and education.

(b) As far as practicable, members of a local citizen review board shall represent the various socioeconomic and ethnic groups of the area served.

(c) A person employed by the department of family services, by a private agency regulated, certified, directed, or licensed by or contracting with the department of family services, or by a youth court may not serve on a local citizen review board.

(d) A member of a local citizen review board must be a resident of one of the counties of the judicial district that the member is appointed to serve.

(4) The members of a local citizen review board must be willing to serve without compensation.

History: **En. Sec. 3, Ch. 610, L. 1993.**

41-3-1004. Administration — training — procedures. (1) Subject to the availability of funds, the youth court of a judicial district designated pursuant to 41-3-1002 shall:

(a) establish and approve policies and procedures that have the force of law for the operation of the local citizen review board;

(b) approve and provide training programs for local citizen review board members;

(c) provide consultation services on request to the local citizen review board; and

(d) employ staff and provide for support services for the local citizen review board.

(2) The youth court of a judicial district designated pursuant to 41-3-1002 shall, at the time prescribed by 5-11-210, prepare a report to the governor, the legislature, and the public regarding:

(a) state laws, policies, and practices affecting permanence and appropriate care for children in the custody of the department of family services and other agencies; and

(b) the effectiveness of the local citizen review board in bringing about permanence and appropriate care for children in the custody of the department of family services and other agencies.

(3) The youth court of a judicial district designated pursuant to 41-3-1002 shall adopt procedures that have the force of law for the administration of the local citizen review board pilot program regarding:

(a) the removal of members of the local citizen review board;

(b) the time, content, and manner in which case plans for and case progress reports on a child assigned to foster care must be provided to the local citizen review board by the department of family services, other agencies, or individuals directly responsible for the care of the child;

(c) the provision of written notice of the review to the department of family services, any other agency directly responsible for the care or placement of a child, the parents or their attorneys, foster parents, surrogate parents, mature children or their attorneys, a court-appointed attorney or special advocate of any child, any county attorney or attorney general actively involved in the case, and other interested persons. The notice must include a statement that persons receiving a notice may participate in the hearing and be accompanied by a representative.

(d) securing or excusing the presence at the review of caseworkers and other employees of the department of family services or other agencies directly responsible for the care of the child; and

(e) the manner in which the local citizen review board may remove cases from review when review is not required under federal law.

History: En. Sec. 4, Ch. 610, L. 1993.

41-3-1005. Removal of members — grounds. Grounds for removal of a member of a local citizen review board under 41-3-1004(3) may include but are not limited to the following:

(1) nonparticipation by a local citizen review board member;

(2) a member establishing residence in a judicial district other than the judicial district in which the court the person was appointed to serve is located;

(3) violation of the confidentiality of information established under 41-3-1007; or

(4) other cause or grounds as necessary for the administration of the program.

History: En. Sec. 5, Ch. 610, L. 1993.

41-3-1006. Terms — officers — meetings. (1) A local citizen review board member shall serve at the pleasure of the appointing authority. However, if not otherwise released from service on a local citizen review board, the following provisions apply:

(a) A member shall serve a term of 2 years, except that if a vacancy occurs, a successor must be appointed to serve the unexpired term.

(b) A member may be reappointed and continue to serve until a successor is appointed.

(2) A local citizen review board shall:

(a) elect annually from its membership a presiding officer and vice presiding officer to serve in the absence of the presiding officer; and

(b) meet at the nearest department of family services office or another place mutually agreed to by a majority of the local citizen review board as often as it considers necessary to carry out the duties of the board.

History: **En. Sec. 6, Ch. 610, L. 1993.**

41-3-1007. Confidentiality of information — penalty. (1) Before beginning to serve on a local citizen review board, each member shall swear or affirm to the court that the member will keep confidential the information reviewed by the board and its actions and recommendations in individual cases.

(2) A member of a local citizen review board who violates the duty imposed by subsection (1) is guilty of a misdemeanor punishable by a fine not to exceed $1,000.

History: **En. Sec. 7, Ch. 610, L. 1993.**

41-3-1008. Access to records. (1) Notwithstanding the provisions of 41-3-205, a local citizen review board has access to:

(a) any records of the youth court that are pertinent to the case; and

(b) any records of the department of family services or other agencies that would be admissible in a dispositional review hearing conducted pursuant to 41-3-406, including school records and reports of private service providers contained in the records of the department of family services or other agencies.

(2) All requested records not already before the local citizen review board must be submitted by the department of family services within 5 working days after receipt of a request. A local citizen review board and any staff provided for the board shall return all records and copies received from the department of family services to the department within 7 working days after completion of the review.

(3) A local citizen review board may retain a reference copy of case material used by the board to make its recommendation if:

(a) the material is necessary for the ongoing work of the local citizen review board with regard to the particular case or to work of the board; and

(b) the confidentiality of the material is continued and protected in the same manner as other material received from the department of family services. Material retained by the local citizen review boards is not subject to disclosure under the public records law.

(4) If a local citizen review board is denied access to requested records, it may request a hearing. The court may require the organization in possession of the records to show cause why the records should not be made available as provided by this section.

History: **En. Sec. 8, Ch. 610, L. 1993.**

41-3-1009. Assignment of cases for review. Within 10 days of entry of the order of disposition or within 30 days of placement, whichever comes first, the youth court shall assign the case of each child in foster care to a local citizen review board and forward to the board a copy of the petition and the order of disposition for each child who is within the jurisdiction of the youth court and who has been placed in foster care.

History: **En. Sec. 9, Ch. 610, L. 1993.**

41-3-1010. Review — scope — procedures — immunity. (1) Except for cases removed from review under procedures established under 41-3-1004, the local citizen review board shall review the case of each child in foster care that is assigned by the youth court.

(2) The review must take place at times set by the local citizen review board. The first review may not be more than 6 months after the child is placed in foster care. Subsequent reviews must take place at least once every 6 months until the child is no longer within the jurisdiction of the youth court or no longer in foster care.

(3) The youth court, by rule of the court or on an individual case basis, may relieve the local citizen review board of its responsibility to review a case if a complete judicial review has taken place within 60 days prior to the next scheduled board review.

(4) The local citizen review board shall review any case in which a petition to terminate parental rights has been denied as soon as practical but no later than 45 days after the denial.

(5) After reviewing each case, the local citizen review board shall prepare written findings and recommendations with respect to:

(a) whether reasonable efforts were made prior to the placement to prevent or to eliminate the need for removal of the child from the home and to make it possible for the child to be returned home;

(b) the continuing need for and appropriateness of the placement;

(c) compliance with the case plan;

(d) the progress that has been made toward alleviating the need for placement;

(e) a likely date by which the child may be returned home or placed for adoption;

(f) other problems, solutions, or alternatives that the local citizen review board determines should be explored; and

(g) whether the youth court should appoint an attorney or other person as special advocate to represent or appear on behalf of the child pursuant to 41-3-303.

(6) Whenever a member of a local citizen review board has a potential conflict of interest in a case being reviewed, the member shall declare to the board the nature of the potential conflict prior to participating in the case review. The following provisions apply:

(a) The declaration of the member must be recorded in the official records of the local citizen review board.

(b) If, in the judgment of the majority of the local citizen review board, the potential conflict of interest may prevent the member from fairly and objectively reviewing the case, the board may remove the member from participation in the review.

(7) The local citizen review board shall keep accurate records and retain the records on file. The local citizen review board shall send copies of its written findings and recommendations to the youth court, the department of family services, and other participants in the review.

(8) The local citizen review board may hold joint or separate reviews for groups of siblings.

(9) The local citizen review board may disclose to parents and their attorneys, foster parents, mature children and their attorneys, and other persons authorized by the board to participate in the case review the records disclosed to the board pursuant to 41-3-1008. Before participating in a local citizen review board case review, each participant, other than parents and children, shall swear or affirm to the board that the participant will keep confidential the information disclosed by the board in the case review and will disclose it only as authorized by law.

History: En. Sec. 10, Ch. 610, L. 1993.

41-3-1011. Recommendations by board. In addition to reviewing individual cases of children in foster care, a local citizen review board may make recommendations to the youth court and to the department of family services concerning foster care services, policies, procedures, and laws.

History: En. Sec. 11, Ch. 610, L. 1993.

41-3-1012. Presence of certain employees at meetings of board. (1) Unless excused from doing so by the local citizen review board, the department of family services and any other agency directly responsible for the care and placement of the child shall require the presence of any employees having knowledge of the case at board meetings.

(2) The local citizen review board may require the presence of specific employees of the department of family services or any other agency or other persons at board meetings. If an employee fails to be present at the meeting, the local citizen review board may request a court order. The court may require the employee to be present and show cause why the employee should not be compelled to appear before the local citizen review board.

(3) As used in this section, "presence" includes telephone participation, except that the caseworker on the case at the time of the meeting must be physically present if required.

History: En. Sec. 12, Ch. 610, L. 1993.

41-3-1013. Court review of findings and recommendations of board. (1) Upon receipt of findings and recommendations from the local citizen review board, the youth court shall:

(a) review the findings and recommendations of the local citizen review board within 10 days. If the youth court finds it appropriate, the youth court may on its own motion schedule a review hearing.

(b) cause the findings and recommendations of the local citizen review board to become part of the youth court file; and

(c) give the local citizen review board written notice if the youth court modifies, alters, or takes action on a case as a result of the board's recommendations or refuses to take action on the board's recommendations in any case.

(2) Upon receipt of findings and recommendations from the local citizen review board, the department of family services shall:

(a) review the findings and recommendations of the local citizen review board within 10 days. The recommendations must be implemented and the case plan modified as the department of family services considers appropriate and as resources permit.

(b) give the local citizen review board written notice as soon as practicable, but in no case later than 7 days after the review is completed, if the department of family services does not intend to implement the recommendations; and

(c) include the findings and recommendations of the local citizen review board as part of the case file of the department of family services.

(3) Upon its own motion or upon the request of the department of family services, the local citizen review board, or any interested party, the youth court may appoint an attorney or other person as special advocate to represent or appear on behalf of the child. Subject to the direction of the youth court, the court-appointed special advocate shall:

(a) investigate all relevant information about the case;

(b) advocate for the child, ensuring that all relevant facts are brought before the court;

(c) facilitate and negotiate to ensure that the youth court, the department of family services, and the child's attorney fulfill their obligations to the child in a timely fashion; and

(d) monitor all youth court orders to ensure compliance and to bring to the youth court's attention any change in circumstance that may require modification of the youth court's order.

History: En. Sec. 13, Ch. 610, L. 1993.

41-3-1014. Dispositional review hearing by youth court. (1) The youth court shall conduct a dispositional review hearing within 18 months after the original placement and conduct a review hearing periodically during the continuation of foster care. Unless good cause otherwise is shown, the youth court shall conduct a dispositional review hearing at any time upon the request of the department of family services, an agency directly responsible for care or placement of the child, a parent whose parental rights have not been terminated, an attorney for the child, a court-appointed special advocate, or a local citizen review board. The youth court shall schedule the hearing as soon as possible after receiving a request.

(2) The court may order that the child or any other person be present during the hearing.

(3) The court shall notify the parties listed in subsection (1) and any other interested parties of the hearing. The notice must state the time and place of the hearing. Upon request of the youth court, the department of family services or other legal custodian of the child shall provide the youth court with information concerning the whereabouts and identity of the parties.

(4) The youth court shall enter an order within 20 days after the review hearing. If the child is in foster care, the order must include a determination of:

(a) whether the child should be returned to the parent;

(b) whether the child should be placed for adoption;

(c) whether the child should continue in foster care for a specified period; or

(d) whether, because of special needs or circumstances, the child should be placed in the permanent custody or guardianship of a responsible relative or other individual or should continue in foster care on a permanent or long-term basis.

(5) If the court determines that the child must be placed or must continue in foster care or must be placed in the custody or guardianship of a responsible relative or other individual, the youth court shall enter written findings specifying why placement with parents or adoption is not appropriate. If the current placement is not expected to be permanent, the youth court shall specify a projected timetable for return of the child to the child's home or for permanent placement. If the timetable set forth by the youth court is not met, the department of family services shall promptly notify the youth court and the parties.

(6) In the course of the dispositional review hearing, the youth court may determine the adequacy of and compliance with the case plan and case progress report. In addition to other orders, the youth court may:

(a) order the department of family services to develop or to expand a case plan or case progress report that must be submitted within 10 days after the hearing;

(b) set a court hearing at a specific later time;

(c) direct the local citizen review board to review the status of the child prior to its next review, as provided in 41-3-1010;

(d) order the department of family services or other agency directly responsible for the child to modify the care, placement, or supervision of the child; and

(e) determine whether the department of family services or other agency directly responsible for the child has made reasonable efforts to reunify the family.

(7) The dispositional review hearing must be conducted in the manner provided in 41-3-406.

(8) Any decision of the youth court made pursuant to the dispositional review hearing is a final order for the purposes of 41-3-406.

History: En. Sec. 14, Ch. 610, L. 1993.

Part 11
Youth Residential Services

Part Cross-References

Place of shelter care or detention, 41-5-306.

Disposition of delinquent youth and youth in need of supervision, 41-5-523.

Relationship of foster homes, youth group homes, and community residential facilities to zoning, 76-2-412.

41-3-1101. Establishment of substitute care for youth. The legislature, in recognition of the wide and varied needs of youth in need of care, delinquent youth, and youth in need of supervision of this state and of the desirability of meeting these needs on a community level to the fullest extent possible, establishes by this part a system of substitute care to provide facilities and services for youth placed out of their homes and establishes a program to provide such facilities and services through local nonprofit corporations, counties, and the department of family services.

History: **En. Sec. 6, Ch. 465, L. 1983; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 2, Ch. 434, L. 1989.**

Cross-References

Duty to strengthen child welfare services, 52-2-112.

41-3-1102. Definitions. For the purposes of this part, the following definitions apply:

(1) "Child-care agency" means a youth care facility in which substitute care is provided to 13 or more children or youth.

(2) "Department" means the department of family services provided for in 2-15-2401.

(3) "Foster child" means a person under 18 years of age who has been placed by the department in a licensed youth foster home.

(4) "Operator of a youth care facility" means any person owning or operating a youth care facility into which he takes any child or children for the purpose of caring for them and maintaining them and for which care and maintenance he receives money or other consideration of value, and which child is neither his son, daughter, nor ward, except that this part shall not apply when any person accepts such care and custody of such child on a temporary basis and simply as a temporary accommodation for the parent or parents, guardian, or relative of such child.

(5) "Person" means any individual, partnership, voluntary association, or corporation.

(6) "Respite care" means the provision of temporary, short-term supervision or care of a foster child, in an emergency or on an intermittent basis, to provide foster parents relief from the daily care requirements of a foster child whose mental or physical condition requires special or intensive supervision or care. Respite care includes but is not limited to homemaker services, child care, and emergency care either in the home or out of the home.

(7) "Respite care provider" means a person who meets the qualifications and requirements established by the department to provide respite care under 41-3-1151.

(8) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and if necessary, treatment to youth who are removed from or without the care and supervision of their parents or guardian.

(9) "Youth care facility" means a facility licensed by the department or by the appropriate licensing authority in another state and in which facility substitute care is provided to youth. The term includes youth foster homes, youth group homes, and child-care agencies.

(10) "Youth foster home" means a youth care facility in which substitute care is provided to one to six children or youth other than the foster parents' own children, stepchildren, or wards.

(11) "Youth group home" means a youth care facility in which substitute care is provided to 7 to 12 children or youth.

History: (1), (2), (5) thru (9)En. Sec. 7, Ch. 465, L. 1983; (3), (4)En. Sec. 1, Ch. 178, L. 1947; Sec. 10-520, R.C.M. 1947; redes. 10-1316 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1316; amd. Sec. 3, Ch. 297, L. 1981; amd. Sec. 16, Ch. 465, L. 1983; MCA 1981, 41-3-501; redes. 41-3-1102 by Sec. 31(4), Ch. 465, L. 1983; amd. Sec. 1, Ch. 531, L. 1985; amd. Sec. 46, Ch. 609, L. 1987; amd. Sec. 1, Ch. 559, L. 1991.

Cross-References

Definition of community residential facility, 76-2-411.

41-3-1103. Powers and duties of department. (1) The department shall:

(a) administer all state and federal funds allocated to the department for youth foster homes, youth group homes, and child-care agencies for youth in need of care, youth in need of supervision, and delinquent youth, as defined in 41-5-103;

(b) exercise licensing authority over all youth foster homes, youth group homes, and child-care agencies;

(c) collect and disseminate information relating to youth in need of care, youth in need of supervision, and delinquent youth;

(d) provide for training of program personnel delivering services;

(e) in cooperation with youth care facility providers, develop and implement standards for youth care facilities;

(f) maintain adequate data on placements it funds in order to keep the legislature properly informed of the following:

(i) the breakdown of youth in need of care, youth in need of supervision, and delinquent youth by category in out-of-home care facilities;

(ii) the cost per facility for services rendered;

(iii) the type and level of care of services provided by each facility;

(iv) a profile of out-of-home care placements by level of care; and

(v) a profile of public institutional placements; and

(g) administer all funds allocated to the department for residential alcohol and drug abuse treatment for indigent youths in need of care, indigent youths in need of supervision, and indigent delinquent youths who require such treatment.

(2) The department may:

(a) enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for youth in need of care, youth in need of supervision, and delinquent youth in youth care facilities;

(b) accept gifts, grants, and donations of money and property from public and private sources to initiate and maintain community-based services to youth;

(c) adopt rules to carry out the administration and purposes of this part.

(3) The department shall pay for room, board, clothing, personal needs, transportation, and treatment in youth foster care homes and youth group homes for youths committed to the department who need to be placed in such facilities. Payments for the clothing of a child placed in a youth foster home must be provided to the extent the child needs a basic wardrobe or has a special clothing need. However, payments for clothing may not exceed $300 a year per child.

History: **En. Secs. 8, 17, Ch. 465, L. 1983; amd. Sec. 8, Ch. 15, L. 1985; amd. Sec. 1, Ch. 177, L. 1985; amd. Sec. 2, Ch. 531, L. 1985; amd. Sec. 47, Ch. 609, L. 1987; amd. Sec. 3, Ch. 434, L. 1989; amd. Sec. 1, Ch. 629, L. 1991; amd. Sec. 18, Ch. 799, L. 1991.**

Cross-References

Administrative duties of Department, 52-2-111.

41-3-1104. Aftercare facilities. The department of family services may establish, maintain, and administer youth correctional facilities, evaluation facilities, mental health facilities and services, aftercare programs, and aftercare facilities for the care, custody, and treatment of youth who have been committed to the department.

History: **En. Sec. 26, Ch. 465, L. 1983; amd. Sec. 3, Ch. 531, L. 1985; amd. Sec. 48, Ch. 609, L. 1987.**

Cross-References

Establishment of juvenile correction facilities, 52-5-101.

Youth aftercare agreement, 52-5-126.

41-3-1105. Transfer of custody to private agency — reports. When the legal custody of a youth is vested in a public agency under the provisions of this part, the public agency may transfer physical custody of the youth to an appropriate private agency and may purchase care and treatment from the private agency if the private agency submits periodic reports to the public agency covering the care and treatment the youth is receiving and the youth's responses to that care and treatment. These reports shall be made as frequently as the public agency or the court deems necessary, but not less often than once each 6 months for each youth. The private agency shall also afford an opportunity for a representative of the public agency to examine or consult with the youth as frequently as the public agency deems necessary.

History: **En. 10-1227 by Sec. 27, Ch. 329, L. 1974; R.C.M. 1947, 10-1227; MCA 1981, 41-5-804; redes. 41-3-1105 by Sec. 31(4), Ch. 465, L. 1983.**

41-3-1106. Repealed. Sec. 112, Ch. 609, L. 1987.

History: **En. Sec. 9, Ch. 465, L. 1983.**

41-3-1107 through 41-3-1110 reserved.

41-3-1111. Renumbered 41-5-314. Sec. 15, Ch. 547, L. 1991.

41-3-1112. Petition for placement in facility. Any person between the ages of 18 and 21 years who is still within the jurisdiction of the youth court or any person under the age of 18 years may petition the youth court of a district in which a licensed youth care facility has been established to be placed in such a facility for any period of time up to the person's 21st birthday.

History: **En. Sec. 23, Ch. 465, L. 1983; amd. Sec. 49, Ch. 609, L. 1987.**

41-3-1113. Repealed. Sec. 112, Ch. 609, L. 1987.

History: **En. Sec. 24, Ch. 465, L. 1983.**

41-3-1114. Continuing jurisdiction of youth court. The youth court committing a delinquent youth or a youth in need of supervision to the department of family services retains continuing jurisdiction over the youth until the youth becomes 21 years of age or is otherwise discharged by the department after notice to the youth court of original jurisdiction.

History: **En. Sec. 25, Ch. 465, L. 1983; amd. Sec. 50, Ch. 609, L. 1987.**

Cross-References

Retention of jurisdiction, 41-5-205.

41-3-1115. Foster care review committee. (1) Except as provided in Title 41, chapter 3, part 10, in every judicial district the youth court judge, in consultation with the department, shall appoint a foster care review committee. The members of the committee must be willing to act without compensation. The committee shall be composed of not less than five or more than seven members. The members shall include:

(a) a representative of the department;

(b) a representative of the youth court;

(c) someone knowledgeable in the needs of children in foster care placements who is not employed by the department or the youth court;

(d) a representative of a local school district;

(e) if the child whose care under review is an Indian, someone, preferably an Indian person, knowledgeable about Indian cultural and family matters who is appointed effective only for and during that review; and

(f) if there is one, the foster parent of the child whose care is under review. The foster parent's appointment is effective only for and during that review.

(2) When a child is in foster care under the supervision of the department or if payment for care is made pursuant to 41-3-1122, the committee shall conduct a review of the foster care status of the child. The review must be conducted within a time limit established by the department. The time limit must comply with federal law and may not be later than the 12-month anniversary date of the child's placement into foster care.

(3) The department shall provide the committee with guidelines for operation of the committee. Within 30 days of the foster care review, the committee shall provide the youth court and the department a written report of its findings and recommendations for further action by the youth court or the department.

(4) The department shall adopt rules necessary to carry out the purposes of this section.

(5) Because of the individual privacy involved, meetings of the committee, reports of the committee, and information on individuals' cases shared by committee members is confidential and subject to the confidentiality requirements of the department.

(6) The committee is subject to the call of the youth court judge to meet and confer with the judge on all matters pertaining to the foster care of a child before the youth court.

History: En. Sec. 2, Ch. 297, L. 1981; amd. Sec. 1, Ch. 201, L. 1983; MCA 1981, 41-5-807; amd. and redes. 41-3-1115 by Sec. 31, Ch. 465, L. 1983; amd. Sec. 1, Ch. 260, L. 1987; amd. Sec. 51, Ch. 609, L. 1987; amd. Sec. 16, Ch. 610, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 610 at beginning of (1) inserted exception clause; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Disclosure of confidential child abuse records to Foster Care Review Committee, 41-3-205.

Duty to strengthen child welfare services, 52-2-112.

41-3-1116 through 41-3-1120 reserved.

41-3-1121. Repealed. Sec. 112, Ch. 609, L. 1987.

History: En. 10-1236 by Sec. 36, Ch. 329, L. 1974; amd. Sec. 11, Ch. 100, L. 1977; amd. Sec. 12, Ch. 571, L. 1977; R.C.M. 1947, 10-1236; amd. Sec. 4, Ch. 297, L. 1981; amd. Sec. 10, Ch. 465, L. 1983; MCA 1981, 41-5-801; redes. 41-3-1121 by Sec. 31(4), Ch. 465, L. 1983; amd. Sec. 9, Ch. 15, L. 1985.

41-3-1122. Payment for support of youth in need of care, youth in need of supervision, or delinquent youth — reimbursement by county. (1) Whenever a youth who is a youth in need of care, a youth in need of supervision, or a delinquent youth is placed by the department of family services in a youth care facility, the department shall pay, within the limits of the appropriation for that purpose, a foster care payment to the youth care facility at a rate established by the department for board, clothing, personal needs, treatment, and room of the youth.

(2) On or before the 20th of each month the department shall present a claim to the county of residence of the youth for no more than one-half of the nonfederal share of the payments so made during the month. The county must make reimbursement to the department within 20 days after the claim is presented.

(3) Except as provided in subsection (4), when a county's level of expenditure for any year reaches the level of reimbursement for foster care in fiscal year 1987, the county has no further obligation for foster care expenditures.

(4) If a county's level of expenditure for foster care in fiscal year 1987 is $10,000 or less, the county's level of expenditure for purposes of determining the county's reimbursement specified in subsection (3) is the level of expenditures for fiscal year 1987 or the average of expenditures for fiscal years 1984 through 1987, whichever is less.

(5) A county that was state-assumed prior to 1987, but at a later date reassumes responsibility pursuant to 53-2-811, is responsible for reimbursement of foster care expenditures up to the county's calculated level of expenditures for fiscal year 1987 as if the county had not been state-assumed.

(6) The department shall conduct or arrange for the review required under 41-3-1115, or when applicable, 41-3-1010 of a youth placed in a youth care facility if the youth is placed by the department.

History: En. Sec. 1, Ch. 48, L. 1949; amd. Sec. 1, Ch. 194, L. 1965; amd. Sec. 1, Ch. 264, L. 1971; amd. Sec. 48, Ch. 121, L. 1974; Sec. 10-524, R.C.M. 1947; redes. 10-1320 by Sec. 14, Ch. 328, L. 1974; amd. Sec. 22, Ch. 100, L. 1977; R.C.M. 1947, 10-1320; amd. Sec. 3, Ch. 543, L. 1979; amd. Sec. 1, Ch. 297, L. 1981; amd. Sec. 11, Ch. 465, L. 1983; MCA 1981, 41-3-104; redes. 41-3-1122 by Sec. 31(4), Ch. 465, L. 1983; amd. Sec. 4, Ch. 531, L. 1985; amd. Sec. 52, Ch. 609, L. 1987; amd. Sec. 8, Ch. 561, L. 1993; amd. Sec. 17, Ch. 610, L. 1993.

Compiler's Comments

1993 Amendments: Chapter 561 inserted (5) clarifying responsibility for foster care expenditures of a county that reassumes responsibility pursuant to 53-2-811. Amendment effective July 1, 1993.

Chapter 610 in (6), after "41-3-1115", inserted "or when applicable, 41-3-1010". Amendment effective July 1, 1993.

Cross-References

Remedy for parental abuse, 40-6-233.

Financial responsibility — interstate placement of children, 41-4-102.

Montana Youth Court Act — place of shelter care or detention, 41-5-306.

Duty to strengthen child welfare services, 52-2-112.

41-3-1123. Repealed. Sec. 11, Ch. 696, L. 1991.

History: 41-3-405 En. 10-1313 by Sec. 9, Ch. 328, L. 1974; R.C.M. 1947, 10-1313(part); amd. Sec. 6, Ch. 567, L. 1979; 41-5-805 En. Sec. 11, Ch. 567, L. 1979; amd. Secs. 12, 13, Ch. 465, L. 1983; 41-3-405 and 41-5-805 combined by Sec. 31(3)(a), Ch. 465, L. 1983; redes.

41-3-1123 by Sec. 31(3)(c), Ch. 465, L. 1983; amd. Sec. 2, Ch. 564, L. 1983; amd. Sec. 53, Ch. 609, L. 1987.

41-3-1124. Repealed. Sec. 11, Ch. 696, L. 1991.

History: 41-3-407 En. Sec. 8, Ch. 567, L. 1979; 41-3-407 amd. Sec. 14, Ch. 465, L. 1983, and Sec. 4, Ch. 564, L. 1983; 41-5-806 En. Sec. 12, Ch. 567, L. 1979; 41-3-407 and 41-5-806 combined by Sec. 31(3)(b), Ch. 465, L. 1983; redes. 41-3-1124 by Sec. 31(3)(c), Ch. 465, L. 1983.

41-3-1125. Repealed. Sec. 11, Ch. 696, L. 1991.

History: (1)En. Sec. 2, Ch. 48, L. 1949; amd. Sec. 1, Ch. 264, L. 1971; Sec. 10-525, R.C.M. 1947; redes. 10-1321 by Sec. 14, Ch. 328, L. 1974; Sec. 10-1321, R.C.M. 1947; (2)En. 10-1313 by Sec. 9, Ch. 328, L. 1974; Sec. 10-1313, R.C.M. 1947; R.C.M. 1947, 10-1313(part), 10-1321; amd. Sec. 2, Ch. 567, L. 1979; amd. Sec. 15, Ch. 465, L. 1983; MCA 1981, 41-3-105; redes. 41-3-1125 by Sec. 31(4), Ch. 465, L. 1983.

41-3-1126. Debt to state by natural or adoptive parents — limitations. If a child has been placed in substitute care, as defined in 41-5-103 and 41-3-1102, and a written agreement for payment of support has been entered into by the responsible parent or parents and the department, the debt for support is limited to the amount provided for in the agreement. However, if a court order for support is or has been entered, the order prevails over the agreement.

History: En. Sec. 10, Ch. 609, L. 1987.

Cross-References

Child support — orders to address health insurance, 40-4-204.

41-3-1127 through 41-3-1130 reserved.

41-3-1131. Power of nonprofit corporations to establish homes and to receive facilities and funds. Nonprofit corporations or associations may be formed or organized for the purpose of establishing youth care facilities or to provide community-based services and to receive from the department and other governmental units such services, facilities, training, and funds as the department or other governmental units may be authorized by law to provide.

History: En. Sec. 18, Ch. 465, L. 1983.

41-3-1132. Governmental contracts with nonprofit organizations. (1) The department may contract with nonprofit corporations or associations to provide facilities and services for youth in need of care, youth in need of supervision, and delinquent youth in youth care facilities and is authorized to expend such money as is appropriated or available therefor. Such contracts shall be based on the following considerations:

(a) budgets submitted by the nonprofit corporation or association identifying fixed and variable costs;

(b) reasonable costs of service;

(c) appropriation level; and

(d) availability of funds.

(2) Governmental units, including but not limited to counties, municipalities, school districts, or state institutions of higher learning, are authorized, at their own expense, to provide funds, materials, facilities, and services for community-based services.

History: En. Sec. 19, Ch. 465, L. 1983.

Cross-References

Public contracts generally, Title 18, ch. 1.

41-3-1133 through 41-3-1140 reserved.

41-3-1141. License required. No person shall maintain or operate a youth care facility for any child or children within the meaning of this part without first securing a license in writing from the department. No fee shall be charged for such license.

History: En. Sec. 2, Ch. 178, L. 1947; amd. Sec. 47, Ch. 121, L. 1974; Sec. 10-521, R.C.M. 1947; redes. 10-1317 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1317; amd. Sec. 20, Ch. 465, L. 1983; MCA 1981, 41-3-502; redes. 41-3-1141 by Sec. 31(4), Ch. 465, L. 1983.

Cross-References

Requirements for visitation, inspection, and supervision, 41-4-106.

Administrative duties of Department, 52-2-111.

Child rehabilitation — duties of Department, 52-2-113.

Relationship of foster homes, youth group homes, and community residential facilities to zoning, 76-2-412.

41-3-1142. Issuance of license — authority of issuing agency. The department is hereby authorized to issue licenses to persons operating youth care facilities and to prescribe the conditions upon which such licenses shall be issued and to make such rules as it may deem advisable for the operation and regulation of such facilities for minor children consistent with the welfare of such children. Such licensing agency shall have the power and authority to inspect all such licensed facilities through its duly authorized representatives and to cancel licenses theretofore issued for the failure to observe such rules. The person operating such homes shall give to such representative such information as may be required and afford him every reasonable opportunity for observing the operation of such homes.

History: En. Sec. 2, Ch. 178, L. 1947; amd. Sec. 47, Ch. 121, L. 1974; Sec. 10-521, R.C.M. 1947; redes. 10-1317 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1317; amd. Sec. 21, Ch. 465, L. 1983; MCA 1981, 41-3-503; redes. 41-3-1142 by Sec. 31(4), Ch. 465, L. 1983.

Cross-References

Requirements for visitation, inspection, and supervision, 41-4-106.

One-step licensing required, 50-8-102.

Administrative duties of Department, 52-2-111.

Duty to strengthen child welfare services, 52-2-112.

Child rehabilitation — duties of Department, 52-2-113.

Relationship of foster homes, youth group homes, and community residential facilities to zoning, 76-2-412.

41-3-1143. Penalty for failure to obtain license. Any person who maintains or operates a youth care facility or assists in operating or maintaining such facility without having first obtained a license in writing as hereto provided shall be guilty of a misdemeanor.

History: En. Sec. 4, Ch. 178, L. 1947; Sec, 10-523, R.C.M. 1947; redes. 10-1319 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1319; amd. Sec. 22, Ch. 465, L. 1983; MCA 1981, 41-3-504; redes. 41-3-1143 by Sec. 31(4), Ch. 465, L. 1983.

Cross-References

Misdemeanor defined, 45-2-101.

Relationship of foster homes, youth group homes, and community residential facilities to zoning, 76-2-412.

41-3-1144 through 41-3-1150 reserved.

41-3-1151. Respite care. (1) The department shall provide respite care, to the extent funds are available, for foster children who are:

(a) developmentally disabled and either on a respite care waiting list or not eligible for respite care from another program;

(b) medically demanding because they are nonambulatory or have other special needs requiring intensive supervision or care; or

(c) suffering from severe emotional problems that are manifested in serious behavior problems.

(2) Respite care may be provided by the department on an hourly, daily, or weekly basis at a rate of payment to be determined by the department.

(3) Respite care may not be provided in an institutionalized setting except in cases involving foster children who require intensive supervision or care.

History: En. Sec. 2, Ch. 559, L. 1991.

41-3-1152. Respite care providers — recruitment, training, and employment — qualifications. (1) The department shall either directly or by contract with public or private, nonprofit agencies recruit, train, and employ respite care providers.

(2) Respite care providers shall meet the qualifications and requirements specified in rules adopted by the department pursuant to 41-3-1103.

History: En. Sec. 3, Ch. 559, L. 1991.

CHAPTER 4

INTERSTATE PLACEMENT OF CHILDREN

Part 1 — Text of Compact

41-4-101. Enactment — provisions.
41-4-102. Financial responsibility.
41-4-103. Appropriate public authorities defined.
41-4-104. Appropriate authority in the receiving state.
41-4-105. Agreements.
41-4-106. Requirements for visitation, inspection, and supervision.
41-4-107. Certain laws not applicable.
41-4-108. Court jurisdiction retained.
41-4-109. Executive head defined.

Chapter Cross-References

Adoption of children, Title 40, ch. 8, part 1.

Department to supervise importation and exportation of children, 52-2-114.

Child adoption agencies, Title 52, ch. 2, part 4.

Subsidized adoption of hard-to-place children, Title 52, ch. 2, part 5.

Part 1

Text of Compact

41-4-101. Enactment — provisions. The Interstate Compact on the Placement of Children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

Article I. Purpose and Policy

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(1) each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care;

(2) the appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child;

(3) the proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made;

(4) appropriate jurisdictional arrangements for the care of children will be promoted.

Article II. Definitions

As used in this compact:

(1) "child" means a person who, by reason of minority, is legally subject to parental, guardianship, or similar control;

(2) "sending agency" means a party state, officer or employee thereof; a subdivision of a party state or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency, or other entity which sends, brings, or causes to be sent or brought any child to another party state;

(3) "receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies and whether for placement with state or local public authorities or for placement with private agencies or persons;

(4) "placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective, or epileptic or any institution primarily educational in character and any hospital or other medical facility.

Article III. Conditions for Placement

(1) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(2) Prior to sending, bringing, or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(a) the name, date, and place of birth of the child;

(b) the identity and address or addresses of the parents or legal guardian;

(c) the name and address of the person, agency, or institution to or with which the sending agency proposes to send, bring, or place the child;

(d) a full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(3) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to (2) of this article may request of the sending agency or any other appropriate officer or agency of or in the sending agency's state and shall be entitled to receive therefrom such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(4) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

Article IV. Penalty for Illegal Placement

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place or care for children.

Article V. Retention of Jurisdiction

(1) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment, and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting, or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or his transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by receiving state sufficient to deal with an act of delinquency or crime committed therein.

(2) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(3) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable

agency of the sending state, nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in (1) hereof.

Article VI. Institutional Care of Delinquent Children

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact, but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

(1) equivalent facilities for the child are not available in the sending agency's jurisdiction; and

(2) institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

Article VII. Compact Administrator

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules to carry out more effectively the terms and provisions of this compact.

Article VIII. Limitations

This compact shall not apply to:

(1) the sending or bringing of a child into a receiving state by his parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state;

(2) any placement, sending, or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party or to any other agreement between said states which has the force of law.

Article IX. Enactment and Withdrawal

This compact shall be open to joinder by any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and with the consent of congress, the government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until 2 years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties, and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

Article X. Construction and Severability

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. 10-1401 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1401.

Cross-References

Effect of judicial record of another state, 26-3-203.

Interagency cooperation, 41-3-107.

Youth residential services, Title 41, ch. 3, part 11.

Disposition of delinquent youth and youth in need of supervision, 41-5-523.

Custodial care, Title 41, ch. 5, part 8.

Administrative duties of Department, 52-2-111.

Department to assist other agencies, 52-2-116.

Child adoption agencies, Title 52, ch. 2, part 4.

Subsidized adoption, Title 52, ch. 2, part 5.

41-4-102. Financial responsibility. Financial responsibility for any child placed pursuant to the provisions of the Interstate Compact on the Placement of Children shall be determined in accordance with the provisions of Article V thereof in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of Title 40, chapter 5 (Revised Uniform Reciprocal Enforcement of Support Act), 41-3-406, and 41-3-1122 also may be invoked.

History: En. 10-1402 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1402; amd. Sec. 18, Ch. 543, L. 1979; amd. Sec. 31, Ch. 465, L. 1983; amd. Sec. 9, Ch. 696, L. 1991.

41-4-103. Appropriate public authorities defined. The "appropriate public authorities" as used in Article III of the Interstate Compact on the Placement of Children shall, with reference to this state, mean the department of family services, and said department shall receive and act with reference to notices required by said Article III.

History: En. 10-1403 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1403; amd. Sec. 11, Ch. 609, L. 1987.

Cross-References

Administrative duties of Department, 52-2-111.

Child rehabilitation — duties of Department, 52-2-113.

Department to supervise importation and exportation of children, 52-2-114.

Department to assist other agencies, 52-2-116.

41-4-104. Appropriate authority in the receiving state. As used in Article V(1) of the Interstate Compact on the Placement of Children, the phrase "appropriate authority in the receiving state" with reference to this state shall mean the department of family services.

History: En. 10-1404 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1404; amd. Sec. 11, Ch. 609, L. 1987.

Cross-References

Administrative duties of Department, 52-2-111.

Child rehabilitation — duties of Department, 52-2-113.

Department to supervise importation and exportation of children, 52-2-114.

Department to assist other agencies, 52-2-116.

41-4-105. Agreements. The officers and agencies of this state and its subdivisions having authority to place children are hereby empowered to enter into agreements with appropriate officers or agencies of or in other party states pursuant to Article V(2) of the Interstate Compact on the Placement of Children. Any such agreement which contains a financial commitment or imposes a financial obligation on this state or subdivision or agency thereof shall not be binding unless it has the approval in writing of the state treasurer in the case of the state and of the chief local fiscal officer in the case of a subdivision of the state.

History: En. 10-1405 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1405.

Cross-References

Payment for support of youth in need of care — reimbursement by county, 41-3-1122.

41-4-106. Requirements for visitation, inspection, and supervision. Any requirements for visitation, inspection, or supervision of children, homes, institutions, or other agencies in another party state which may apply under 41-3-1141, 41-3-1142, and 52-2-113 are considered to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this state or a subdivision thereof as contemplated by Article V(2) of the Interstate Compact on the Placement of Children.

History: En. 10-1406 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1406; amd. Sec. 31, Ch. 465, L. 1983.

Cross-References

Inspection by employees of other departments, 50-8-105.

41-4-107. Certain laws not applicable. The provisions of 52-2-114 shall not apply to placements made pursuant to the Interstate Compact on the Placement of Children.

History: En. 10-1407 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1407.

41-4-108. Court jurisdiction retained. Any court having jurisdiction to place delinquent children may place such a child in an institution of or in another state pursuant to Article VI of the Interstate Compact on the Placement of Children and shall retain jurisdiction as provided in Article V thereof.

History: En. 10-1408 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1408.

Cross-References

Jurisdiction and venue in abuse, neglect, and dependency cases, 41-3-103.

Youth Court — jurisdiction, Title 41, ch. 5, part 2.

41-4-109. Executive head defined. As used in Article VII of the Interstate Compact on the Placement of Children, the term "executive head" means the governor. The governor is hereby authorized to appoint a compact administrator in accordance with the terms of said Article VII.

History: En. 10-1409 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1409.

Cross-References

Policymaking authority and administrative powers of Governor, 2-15-103.

Powers and duties of Governor, 2-15-201.

CHAPTER 5

YOUTH COURT ACT

Part 1 — General

41-5-101. Short title.
41-5-102. Declaration of purpose.
41-5-103. Definitions.
41-5-104. County commissioners authorized to provide funds.
41-5-105. Youth court committee.
41-5-106. Order of adjudication — noncriminal.
41-5-107. Administration.
41-5-108 and 41-5-109 reserved.
41-5-110. Youth court hearings — priority.

Part 2 — Youth Court — Jurisdiction

41-5-201. Youth court judge.
41-5-202. Disqualification of judges.
41-5-203. Jurisdiction of the court.
41-5-204. Venue and transfer.
41-5-205. Retention of jurisdiction.
41-5-206. Transfer to criminal court.
41-5-207. Court costs and expenses.

Part 3 — Detention Procedure

41-5-301. Preliminary investigation and disposition.
41-5-302. Renumbered 41-3-1111.
41-5-303. Rights of youth taken into custody — questioning — hearing for probable cause — detention.
41-5-304. Investigation, fingerprints, and photographs.
41-5-305. Criteria for placement of youth in secure detention facilities or shelter care facilities.
41-5-306. Place of shelter care or detention.
41-5-307. Release or delivery from custody.
41-5-308. Repealed.
41-5-309. Bail.
41-5-310. Detention of youth in need of supervision — prohibitions.
41-5-311. Youth not to be detained in jail — exceptions — time limitations.
41-5-312. Probable cause hearing — telephonic proceeding authorized.
41-5-313. Permitted acts — detention of youth in law enforcement facilities — criteria.
41-5-314. Taking into custody.
41-5-315. Repealed.
41-5-316. Repealed.

Part 4 — Informal Proceeding

41-5-401. Consent adjustment without petition.
41-5-402. Communications privileged.
41-5-403. Disposition permitted under informal adjustment — contributions by parents or guardians for youth's care.

Part 5 — Proceeding on Petition

41-5-501. Petition — form and content.
41-5-502. Summons.
41-5-503. Service of summons.
41-5-504 through 41-5-510 reserved.
41-5-511. Right to counsel.
41-5-512. Appointment of guardian ad litem.
41-5-513. Right to confront witnesses.

41-5-514. Admissibility of confession or illegally seized evidence.
41-5-515. Persons to be advised of rights.
41-5-516. Repealed.
41-5-517 through 41-5-520 reserved.
41-5-521. Adjudicatory hearing.
41-5-522. Dispositional hearing.
41-5-523. Disposition — commitment to department — placement and evaluation of youth — restrictions.
41-5-524. Consent decree with petition.
41-5-525. Youth placement committees — composition.
41-5-526. Duties of the youth placement committee.
41-5-527. Youth placement committee to submit recommendation to department — acceptance or rejection of recommendation by department.
41-5-528. Temporary and emergency placements — limit.
41-5-529. Confidentiality of youth placement committee meetings and records.
41-5-530. Parental contributions account — allocation of proceeds.
41-5-531. Posttrial motions.
41-5-532. Appeals.
41-5-533. Probation revocation — disposition.

Part 6 — Confidentiality of Proceedings—Records

41-5-601. Confidentiality.
41-5-602. Law enforcement records.
41-5-603. Youth court and department records.
41-5-604. Disposition of records.

Part 7 — Probation Officers

41-5-701. Appointment of probation officers.
41-5-702. Qualifications of probation officers.
41-5-703. Powers and duties of probation officers.
41-5-704. Salary and expenses.
41-5-705. Deputy probation officers — salary.

Part 8 — Custodial Care

41-5-801. Renumbered 41-3-1121.
41-5-802. Shelter care facilities.
41-5-803. Repealed.
41-5-804. Renumbered 41-3-1105.
41-5-805. Combined with 41-3-405, renumbered 41-3-1123.
41-5-806. Combined with 41-3-407, renumbered 41-3-1124.
41-5-807. Renumbered 41-3-1115.
41-5-808. Repealed.
41-5-809. Rules.
41-5-810. County responsibility to provide youth detention services.
41-5-811. Regional detention facilities.
41-5-812. Creation of regions — requirements — limitation on number of regions.
41-5-813. Contracts with nonparticipating counties.
41-5-814. Responsibility for payment of detention costs.

Part 9 — District Youth Guidance Homes
(Repealed. Sec. 32, Ch. 465, L. 1983)

Part 10 — State Grants For Youth Detention Services

41-5-1001. Definitions.
41-5-1002. State grants to counties.
41-5-1003. Application for grants — county plans — obligation of counties receiving grants — review and monitoring.
41-5-1004. Distribution of grants — limitation of funding — restrictions on use.
41-5-1005. Allocation of grants.
41-5-1006. Amendment of state plan.

41-5-1007. Compliance with federal requirements.
41-5-1008. Rulemaking authority.

Chapter Cross-References

Civil liability of parent for shoplifting by minor, 27-1-718.

Crimes, Title 45.

Unlawful possession of an intoxicating substance by children, 45-5-624.

Use of firearms by children under fourteen prohibited, 45-8-344.

Department of Family Services — youthful offenders, Title 52, ch. 5, part 1.

Part 1

General

Part Cross-References

Destruction of property by minor — liability of parents, 40-6-237.

Youthful offenders, Title 52, ch. 5, part 1.

41-5-101. Short title. This chapter may be cited as the "Montana Youth Court Act".

History: En. 10-1201 by Sec. 1, Ch. 329, L. 1974; R.C.M. 1947, 10-1201.

41-5-102. Declaration of purpose. The Montana Youth Court Act shall be interpreted and construed to effectuate the following express legislative purposes:

(1) to preserve the unity and welfare of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of a youth coming within the provisions of the Montana Youth Court Act;

(2) to remove from youth committing violations of the law the element of retribution and to substitute therefor a program of supervision, care, rehabilitation, and, in appropriate cases, restitution as ordered by the youth court;

(3) to achieve the purposes of (1) and (2) of this section in a family environment whenever possible, separating the youth from his parents only when necessary for the welfare of the youth or for the safety and protection of the community;

(4) to provide judicial procedures in which the parties are assured a fair hearing and recognition and enforcement of their constitutional and statutory rights.

History: En. 10-1202 by Sec. 2, Ch. 329, L. 1974; R.C.M. 1947, 10-1202; amd. Sec. 1, Ch. 246, L. 1979.

Cross-References

Application of Montana Rules of Civil Procedure to this chapter, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

Action on reporting, 41-3-202.

Abuse, neglect, or dependency proceedings, Title 41, ch. 3, part 4.

Recognition of parental control of children, 52-2-102.

41-5-103. Definitions. As used in the Montana Youth Court Act, unless the context requires otherwise, the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.

(3) "Commit" means to transfer to legal custody.

(4) "Correctional facility" means a public or private residential facility used for the placement of delinquent youth or individuals convicted of criminal offenses.

(5) "Court", when used without further qualification, means the youth court of the district court.

(6) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the youth has been given but does not include a person who has only physical custody.

(7) "Delinquent youth" means a youth:

(a) who has committed an offense that, if committed by an adult, would constitute a criminal offense; or

(b) who, having been placed on probation as a delinquent youth or a youth in need of supervision, violates any condition of his probation.

(8) "Department" means the department of family services provided for in 2-15-2401.

(9) "Detention" means the holding or temporary placement of a youth in the youth's home under home arrest or in a facility other than the youth's own home for the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of his case.

(10) "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will. The term includes a youth detention facility, short-term detention center, and regional detention facility.

(11) "Final disposition" means the implementation of a court order for the disposition or placement of a youth as provided in 41-5-523.

(12) "Foster home" means a private residence licensed by the department for placement of a youth.

(13) "Guardianship" means the status created and defined by law between a youth and an adult with the reciprocal rights, duties, and responsibilities.

(14) "Holdover" means a room, office, building, or other place approved by the board of crime control for the temporary detention and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care facility. The term does not include a jail.

(15) "Jail" means a facility used for the confinement of adults accused or convicted of criminal offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after arrest.

(16) "Judge", when used without further qualification, means the judge of the youth court.

(17) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what period;

(iii) protect, train, and discipline the youth; and

(iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise his rights and duties as guardian unless otherwise authorized by the court entering the order.

(18) "Necessary parties" includes the youth, his parents, guardian, custodian, or spouse.

(19) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless his paternity is established by an adjudication or by other clear and convincing proof.

(20) "Probable cause hearing" means the hearing provided for in 41-5-303.

(21) "Regional detention facility" means a youth detention facility established and maintained by two or more counties, as authorized in 41-5-811.

(22) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to an informal adjustment, consent decree, or other youth court order.

(23) "Secure detention facility" means any public or private facility that:

(a) is used for the temporary placement of youth or individuals accused or convicted of criminal offenses; and

(b) is designed to physically restrict the movements and activities of youth or other individuals held in lawful custody of the facility.

(24) "Serious juvenile offender" means a youth who has committed an offense that would be considered a felony offense if committed by an adult and that is an offense against a person, an offense against property, or an offense involving dangerous drugs.

(25) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

(26) "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to the facilities enumerated in 41-5-306(1).

(27) "Short-term detention center" means a detention facility licensed by the department for the temporary placement or care of youth, for a period not to exceed 96 hours, pending a probable cause hearing, release, or transfer of the youth to an appropriate detention facility or shelter care facility.

(28) "State youth correctional facility" means a residential facility used for the placement and rehabilitation of delinquent youth, such as the Pine Hills school in Miles City and the Mountain View school in Helena.

(29) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are removed from or are without the care and supervision of their parents or guardian.

(30) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

(31) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care and includes the youth court judge and probation officers.

(32) "Youth detention facility" means a secure detention facility licensed by the department for the temporary substitute care of youth that:

(a) is operated, administered, and staffed separately and independently of a jail; and

(b) is used exclusively for the lawful detention of alleged or adjudicated delinquent youth.

(33) "Youth in need of care" has the meaning provided for in 41-3-102.

(34) "Youth in need of supervision" means a youth who commits an offense prohibited by law that, if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:

(a) violates any Montana municipal or state law regarding use of alcoholic beverages by minors;

(b) continues to exhibit behavior beyond the control of his parents, foster parents, physical custodian, or guardian despite the attempt of his parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediate, resolve, or control the youth's behavior; or

(c) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses to regard as a youth in need of supervision.

History: Ap.p. Sec. 3, Ch. 329, L. 1974; amd. Sec. 1, Ch. 571, L. 1977; Sec. 10-1203, R.C.M. 1947; Ap.p. Sec. 2, Ch. 427, L. 1971; Sec. 10-1102, R.C.M. 1947; amd. and redes. 10-1243 by Sec. 43, Ch. 329, L. 1974; amd. Sec. 15, Ch. 571, L. 1977; Sec. 10-1243, R.C.M. 1947; R.C.M. 1947, 10-1203, 10-1243; amd. Sec. 2, Ch. 246, L. 1979; amd. Sec. 1, Ch. 233, L. 1983; amd. Sec. 2, Ch. 465, L. 1983; amd. Sec. 6, Ch. 475, L. 1987; amd. Sec. 1, Ch. 515, L. 1987; amd. Sec. 54, Ch. 609, L. 1987; amd. Sec. 1, Ch. 231, L. 1991; amd. Sec. 2, Ch. 547, L. 1991; amd. Sec. 2, Ch. 548, L. 1991; amd. Secs. 1, 29, Ch. 799, L. 1991.

Cross-References

Minors and adults defined, 41-1-101.

Youth residential services, Title 41, ch. 3, part 11.

State grants for youth detention services, Title 41, ch. 5, part 10.

Guardians of minors, Title 72, ch. 5, part 2.

41-5-104. County commissioners authorized to provide funds. (1) The county commissioners of all counties are hereby authorized, empowered, and required to provide the necessary funds and to make all needful appropriations to carry out the provisions of this chapter.

(2) Each county shall pay its portion of the costs of the youth court based:

(a) on actual costs incurred in or on behalf of the county; or

(b) if actual costs cannot be identified, on each county's proportion of the total youth court workload in the judicial district during the calendar year preceding the setting of the budget.

(3) The youth court judge shall, in January of each year, establish the proportion of the workload of the court to be attributed to each county in the ensuing budget year for purposes of any necessary application of subsection (2)(b).

History: En. Sec. 30, Ch. 227, L. 1943; Sec. 10-631, R.C.M. 1947; redes. 10-1239 by Sec. 39, Ch. 329, L. 1974; R.C.M. 1947, 10-1239; amd. Sec. 1, Ch. 580, L. 1985.

Cross-References

District Court budget, 7-6-2351.

County levy for District Court expenses, 7-6-2511.

41-5-105. Youth court committee. In every county of the state the judge having jurisdiction may appoint a committee, willing to act without compensation, composed of not less than three or more than seven reputable citizens, including youth representatives. The committee must be designated as a youth court committee. This committee shall meet subject to the call of the judge to confer with him on all matters pertaining to the youth department of the court, including the appointment of probation officers, and shall act as a supervisory committee of youth detention facilities.

History: **En. Sec. 27, Ch. 227, L. 1943; amd. Sec. 1, Ch. 128, L. 1957; amd. Sec. 13, Ch. 262, L. 1969; Sec. 10-628, R.C.M. 1947; amd. and redes. 10-1240 by Sec. 40, Ch. 329, L. 1974; R.C.M. 1947, 10-1240; amd. Sec. 19, Ch. 799, L. 1991.**

Cross-References

Place of shelter care or detention, 41-5-306.

Appointment of probation officers, 41-5-701.

41-5-106. Order of adjudication — noncriminal. No placement of any youth in any state youth correctional facility under this chapter shall be deemed commitment to a penal institution. No adjudication upon the status of any youth in the jurisdiction of the court shall operate to impose any of the civil disability imposed on a person by reason of conviction of a criminal offense, nor shall such adjudication be deemed a criminal conviction, nor shall any youth be charged with or convicted of any crime in any court except as provided in this chapter. Neither the disposition of a youth under this chapter nor evidence given in youth court proceedings under this chapter shall be admissible in evidence except as otherwise provided in this chapter.

History: **En. 10-1235 by Sec. 35, Ch. 329, L. 1974; amd. Sec. 11, Ch. 571, L. 1977; R.C.M. 1947, 10-1235; amd. Sec. 55, Ch. 609, L. 1987.**

Cross-References

Fingerprints and photographs, 41-5-304.

Communications privileged, 41-5-402.

Right to counsel, 41-5-511.

Admissibility of confession or illegally seized evidence, 41-5-514.

Disposition of delinquent youth and youth in need of supervision, 41-5-523.

Law enforcement records, 41-5-602.

Youth Court records, 41-5-603.

41-5-107. Administration. The provisions of Title 41, chapter 3, part 11, govern the administration of this chapter.

History: **En. Sec. 30, Ch. 465, L. 1983.**

41-5-108 and 41-5-109 reserved.

41-5-110. Youth court hearings — priority. All hearings and other court appearances required under Title 41, chapter 5, must be given priority by the court and must be scheduled to be heard as expeditiously as possible.

History: **En. Sec. 15, Ch. 515, L. 1987.**

Part 2

Youth Court — Jurisdiction

41-5-201. Youth court judge. (1) Each judicial district in the state shall have at least one judge of the youth court. His duties shall be to:

(a) appoint and supervise qualified personnel to staff the youth division probation departments within the judicial district;

(b) conduct hearings on youth court proceedings under this chapter;

(c) perform any other functions consistent with the legislative purpose of this chapter.

(2) In each multijudge judicial district the judges shall, by court rule, designate one or more of their number to act as youth court judge in each

county in the judicial district for a fixed period of time. Service as youth court judge may be rotated among the different judges of the judicial district and among the individual counties within the judicial district for given periods of time. Continuity of service of a given judge as youth court judge and continuity in the operation and policies of the youth court in the county having the largest population in the judicial district shall be the principal consideration of the rule.

History: **En. 10-1233 by Sec. 33, Ch. 329, L. 1974; R.C.M. 1947, 10-1233(part); amd. Sec. 1, Ch. 60, L. 1985.**

Cross-References

District Court judges, Title 3, ch. 5, part 2.

Proceeding on petition, Title 41, ch. 5, part 5.

Appointment of probation officers, 41-5-701.

41-5-202. Disqualification of judges. The statutes of the state of Montana relating to disqualification of judges in criminal proceedings shall apply to all proceedings under this chapter.

History: **En. 10-1223 by Sec. 23, Ch. 329, L. 1974; R.C.M. 1947, 10-1223; amd. Sec. 2, Ch. 515, L. 1987.**

Cross-References

Disqualification and substitution of judges, Title 3, ch. 1, part 8.

41-5-203. Jurisdiction of the court. (1) Except as provided in subsection (2), the court has exclusive original jurisdiction of all proceedings under the Montana Youth Court Act in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care or concerning any person under 21 years of age charged with having violated any law of the state or ordinance of any city or town other than a traffic or fish and game law prior to having become 18 years of age.

(2) Justice, municipal, and city courts have concurrent jurisdiction with the youth court over all alcoholic beverage and gambling violations alleged to have been committed by a youth.

History: **En. 10-1206 by Sec. 6, Ch. 329, L. 1974; amd. Sec. 3, Ch. 100, L. 1977; amd. Sec. 1, Ch. 446, L. 1977; R.C.M. 1947, 10-1206; amd. Sec. 1, Ch. 427, L. 1979; amd. Sec. 22, Ch. 626, L. 1993.**

Compiler's Comments

1993 Amendment: Chapter 626 in (2), after "beverage", inserted "and gambling".

Cross-References

Municipal Courts — jurisdiction, 3-6-103.

Justices' Courts — criminal jurisdiction, 3-10-303.

City Courts — concurrent jurisdiction, 3-11-102.

Jurisdiction of courts — alcohol violations, 16-6-201.

Jurisdiction and venue, 41-3-103.

Continuing jurisdiction of Youth Court, 41-3-1114.

Priority of Youth Court hearings, 41-5-110.

Criminal possession of toxic substances, 45-9-121.

41-5-204. Venue and transfer. (1) The county where a youth is a resident or is alleged to have violated the law has initial jurisdiction over any youth alleged to be a delinquent youth. The youth court shall assume the initial handling of the case.

(2) The county where a youth is a resident has initial jurisdiction over any youth alleged to be a youth in need of supervision or a youth in need of care.

The youth court of that county shall assume the initial handling of the case. Transfers of venue may be made to any of the following counties in the state:

(a) the county in which the youth is apprehended or found;

(b) the county in which the youth is alleged to have violated the law; or

(c) the county of residence of the youth's parents or guardian.

(3) In the case of a youth alleged to be a youth in need of supervision or a youth in need of care, a change of venue may be ordered at any time by the concurrence of the youth court judges of both counties in order to assure a fair, impartial, and speedy hearing and final disposition of the case.

(4) In the case of a youth 16 years of age or older who is accused of one of the serious offenses listed in 41-5-206, the court in the county where the offense occurred shall serve as a transfer hearing court, and if the youth is to be tried in district court, the charge shall be filed and trial held in the district court of the county where the offense occurred.

History: En. 10-1207 by Sec. 7, Ch. 329, L. 1974; R.C.M. 1947, 10-1207; amd. Sec. 2, Ch. 60, L. 1985.

Cross-References

Residence — rules for determining, 1-1-215.

District Court original jurisdiction, 3-5-302.

Jurisdiction and venue, 41-3-103.

Place of trial — change of venue, 46-3-111.

41-5-205. Retention of jurisdiction. Once a court obtains jurisdiction over a youth, the court retains jurisdiction unless terminated by the court or by mandatory termination in the following cases:

(1) at the time the proceedings are transferred to adult criminal court;

(2) at the time the youth is discharged by the department; and

(3) in any event, at the time the youth reaches the age of 21 years.

History: En. 10-1208 by Sec. 8, Ch. 329, L. 1974; R.C.M. 1947, 10-1208; amd. Sec. 56, Ch. 609, L. 1987.

Cross-References

Minors and adults defined, 41-1-101.

Jurisdiction and venue, 41-3-103.

Continuing jurisdiction of Youth Court, 41-3-1114.

Disposition permitted under informal adjustment, 41-5-403.

Disposition of delinquent youth and youth in need of supervision, 41-5-523.

41-5-206. Transfer to criminal court. (1) After a petition has been filed alleging delinquency, the court may, upon motion of the county attorney, before hearing the petition on its merits, transfer the matter of prosecution to the district court if:

(a) (i) the youth charged was 12 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act would constitute sexual intercourse without consent as defined in 45-5-503, deliberate homicide as defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult; or

(ii) the youth charged was 16 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(A) negligent homicide as defined in 45-5-104;

(B) arson as defined in 45-6-103;

(C) aggravated or felony assault as defined in 45-5-202;

(D) robbery as defined in 45-5-401;

(E) burglary or aggravated burglary as defined in 45-6-204;

(F) aggravated kidnapping as defined in 45-5-303;

(G) possession of explosives as defined in 45-8-335;

(H) criminal sale of dangerous drugs as defined in 45-9-101;

(I) criminal production or manufacture of dangerous drugs as defined in 45-9-110;

(J) attempt, as defined in 45-4-103, of any of the acts enumerated in subsections (1)(a)(ii)(A) through (1)(a)(ii)(I);

(b) a hearing on whether the transfer should be made is held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing will be conducted by the youth court without a jury;

(c) notice in writing of the time, place, and purpose of the hearing is given to the youth, his counsel, and his parents, guardian, or custodian at least 10 days before the hearing; and

(d) the court finds upon the hearing of all relevant evidence that there is probable cause to believe that:

(i) the youth committed the delinquent act alleged;

(ii) the seriousness of the offense and the protection of the community require treatment of the youth beyond that afforded by juvenile facilities; and

(iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.

(2) In transferring the matter of prosecution to the district court, the court may also consider the following factors:

(a) the sophistication and maturity of the youth, determined by consideration of the youth's home, environmental situation, and emotional attitude and pattern of living;

(b) the record and previous history of the youth, including previous contacts with the youth court, law enforcement agencies, youth courts in other jurisdictions, prior periods of probation, and prior commitments to juvenile institutions. However, lack of a prior juvenile history with youth courts will not of itself be grounds for denying the transfer.

(3) The court shall grant the motion to transfer if the youth was 16 years old or older at the time of the conduct alleged to be unlawful and the unlawful act would constitute deliberate homicide as defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult.

(4) Upon transfer to district court, the judge shall make written findings of the reasons why the jurisdiction of the youth court was waived and the case transferred to district court.

(5) The transfer terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the petition. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in this section.

(6) Upon order of the youth court transferring the case to the district court, the county attorney shall file the information against the youth without unreasonable delay.

(7) Any offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1), upon motion of the county attorney and order of the youth court judge.

(8) If a youth is found guilty in district court of any of the offenses transferred by the youth court and is sentenced to the state prison, the commitment must be to the department of corrections and human services. The department shall confine the youth in whatever institution it considers proper, including a state youth correctional facility under the procedures of 52-5-111; however, no youth under 16 years of age may be confined in the state prison.

(9) A youth whose case is transferred to district court may not be detained or otherwise placed in a jail or other adult detention facility before final disposition of his case unless:

(a) alternative facilities do not provide adequate security; and

(b) the youth is kept in an area that provides physical, as well as sight and sound, separation from adults accused or convicted of criminal offenses.

History: En. 10-1229 by Sec. 29, Ch. 329, L. 1974; amd. Sec. 9, Ch. 100, L. 1977; R.C.M. 1947, 10-1229; amd. Sec. 1, Ch. 484, L. 1981; amd. Sec. 3, Ch. 60, L. 1985; amd. Sec. 100, Ch. 370, L. 1987; amd. Sec. 3, Ch. 515, L. 1987; amd. Sec. 57, Ch. 609, L. 1987; amd. Sec. 4, Ch. 434, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 6, Ch. 547, L. 1991; amd. Sec. 2, Ch. 448, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 448 inserted (1)(a)(ii)(I) allowing transfer to District Court of the prosecution of the offense of criminal production or manufacture of dangerous drugs; at end of (1)(a)(ii)(J) substituted "(1)(a)(ii)(I)" for (1)(a)(ii)(H); and made minor changes in style.

Cross-References

Petition — form and content, 41-5-501.

Right to counsel, 41-5-511.

Law enforcement records, 41-5-602.

Youth Court records, 41-5-603.

Commutation of sentence to state prison and transfer to juvenile correctional facility, 52-5-111.

Montana State Prison, Title 53, ch. 30, part 1.

41-5-207. Court costs and expenses. The following expenses shall be a charge upon the funds of the court or other appropriate agency when applicable, upon their certification by the court:

(1) the costs of medical and other examinations and treatment of a youth ordered by the court;

(2) reasonable compensation for services and related expenses for counsel appointed by the court for a party;

(3) the expenses of service of summons, notices, subpoenas, traveling expenses of witnesses, and other like expenses incurred in any proceeding under the Montana Youth Court Act as provided for by law;

(4) reasonable compensation of a guardian ad litem appointed by the court; and

(5) cost of transcripts and printing briefs on appeal.

History: En. 10-1226 by Sec. 26, Ch. 329, L. 1974; R.C.M. 1947, 10-1226; amd. Sec. 6, Ch. 363, L. 1983; amd. Sec. 1, Ch. 737, L. 1985; amd. Sec. 2, Ch. 11, Sp. L. June 1986; amd. Sec. 6, Ch. 14, Sp. L. June 1986.

Cross-References

Rights of persons not adults, Art. II, sec. 15, Mont. Const.

Mileage — allowance, 2-18-503.

Mileage computed by shortest traveled route, 2-18-504.

Clerk of District Court — duties relating to jurors and witnesses, 3-5-510.
Procedure in reference to witnesses' certificates, 3-5-511.
Copies of proceedings, 3-5-604.
Guardian ad litem, 25-5-301, 41-3-303.
Allowable costs, Title 25, ch. 10, part 2.
Attorneys' fees, Title 25, ch. 10, part 3.
Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).
Right to counsel, 41-5-511.
Appointment of guardian ad litem, 41-5-512.
Remuneration of appointed counsel, 46-8-201.

Part 3

Detention Procedure

Part Cross-References

Juvenile detention center standards, 7-32-2244.

41-5-301. Preliminary investigation and disposition. (1) Whenever the court receives information from any agency or person, based upon reasonable grounds, that a youth is or appears to be a delinquent youth or a youth in need of supervision or, being subject to a court order or consent order, has violated the terms thereof, a probation officer shall make a preliminary inquiry into the matter.

(2) The probation officer may:

(a) require the presence of any person relevant to the inquiry;

(b) request subpoenas from the judge to accomplish this purpose;

(c) require investigation of the matter by any law enforcement agency or any other appropriate state or local agency.

(3) If the probation officer determines that the facts indicate a youth in need of care, the matter shall be immediately referred to the department.

(4) (a) The probation officer in the conduct of the preliminary inquiry shall:

(i) advise the youth of the youth's rights under this chapter and the constitutions of the state of Montana and the United States;

(ii) determine whether the matter is within the jurisdiction of the court;

(iii) determine, if the youth is in detention or shelter care, whether such detention or shelter care should be continued based upon criteria set forth in 41-5-305.

(b) Once relevant information is secured, the probation officer shall:

(i) determine whether the interest of the public or the youth requires that further action be taken;

(ii) terminate the inquiry upon the determination that no further action be taken; and

(iii) release the youth immediately upon the determination that the filing of a petition is not authorized.

(5) The probation officer upon determining that further action is required may:

(a) provide counseling, refer the youth and his parents to another agency providing appropriate services, or take any other action or make any informal adjustment that does not involve probation or detention;

(b) provide for treatment or adjustment involving probation or other disposition authorized under 41-5-401 through 41-5-403, provided such treatment or adjustment is voluntarily accepted by the youth's parents or guardian and the youth, and provided further that said matter is referred immediately to the county attorney for review and that the probation officer proceed no further unless authorized by the county attorney; or

(c) refer the matter to the county attorney for filing a petition charging the youth to be a delinquent youth or a youth in need of supervision.

(6) The county attorney may apply to the youth court for permission to file a petition charging a youth to be a delinquent youth or a youth in need of supervision. The application must be supported by such evidence as the youth court may require. If it appears that there is probable cause to believe that the allegations of the petition are true, the youth court shall grant leave to file the petition.

(7) A petition charging a youth held in detention must be filed within 7 working days from the date the youth was first taken into custody or the petition shall be dismissed and the youth released unless good cause is shown to further detain such youth.

(8) If no petition is filed under this section, the complainant and victim, if any, shall be informed by the probation officer of the action and the reasons therefor and shall be advised of the right to submit the matter to the county attorney for review. The county attorney, upon receiving a request for review, shall consider the facts, consult with the probation officer, and make the final decision as to whether a petition shall be filed.

History: En. 10-1209 by Sec. 9, Ch. 329, L. 1974; amd. Sec. 2, Ch. 571, L. 1977; R.C.M. 1947, 10-1209; amd. Sec. 4, Ch. 515, L. 1987; amd. Sec. 58, Ch. 609, L. 1987; amd. Sec. 1, Ch. 271, L. 1989.

Cross-References

Subpoena for attendance of witnesses, Rule 45(a), M.R.Civ.P. (see Title 25, ch. 20).

Proceeding on petition, Title 41, ch. 5, part 5.

Powers and duties of probation officers, 41-5-703.

41-5-302. Renumbered 41-3-1111. Sec. 31, Ch. 465, L. 1983.

41-5-303. Rights of youth taken into custody — questioning — hearing for probable cause — detention. (1) When a youth is taken into custody for questioning upon a matter that could result in a petition alleging that the youth is either a delinquent youth or a youth in need of supervision, the following requirements must be met:

(a) The youth must be advised of his right against self-incrimination and his right to counsel.

(b) The youth may waive these rights under the following situations:

(i) when the youth is 16 years of age or older, the youth may make an effective waiver;

(ii) when the youth is under the age of 16 years and the youth and a parent or guardian agree, they may make an effective waiver; and

(iii) when the youth is under the age of 16 years and the youth and his parent or guardian do not agree, the youth may make an effective waiver only with advice of counsel.

(c) The investigating officer, probation officer, or person assigned to give notice shall immediately notify the parents, guardian, or legal custodian of the youth that the youth has been taken into custody, the reasons for taking the youth into custody, and where the youth is being held. If the parents, guardian, or legal custodian cannot be found through diligent efforts, a close relative or friend chosen by the youth must be notified.

(2) Unless a youth has been released, a hearing must be held within 24 hours after the youth is taken into custody, excluding weekends and legal holidays, to determine whether there is probable cause to believe that the youth is a delinquent youth or a youth in need of supervision.

(3) The probable cause hearing required under subsection (2) may be held by the youth court, a justice of the peace, a municipal or city judge, or a magistrate having jurisdiction in the case as provided in 41-5-203. If the probable cause hearing is held by a justice of the peace, a municipal or city judge, or a magistrate, a record of the hearing must be made by a court reporter or by a tape recording of the hearing.

(4) At the probable cause hearing, the youth must be informed of his constitutional rights and his rights under this chapter.

(5) A parent, guardian, or legal custodian of the youth may be held in contempt of court for failing to be present at or to participate in the probable cause hearing unless he:

(a) cannot be located through diligent efforts of the investigating peace officer or peace officers; or

(b) is excused by the court for good cause.

(6) At the probable cause hearing, a guardian ad litem may be appointed as provided in 41-5-512.

(7) If it is determined that there is probable cause to believe the youth is a delinquent youth or is a youth in need of supervision, the court having jurisdiction in the case shall determine whether the youth should be retained in custody. If the court determines that continued custody of the youth is necessary and if the youth meets the criteria in 41-5-305, the youth may be placed in a detention facility or shelter care facility as provided in 41-5-306 but may not be placed in a jail or other facility used for the confinement of adults accused or convicted of criminal offenses.

(8) If probable cause is not found or if a probable cause hearing is not held within the time specified in subsection (2), the youth must be immediately released from custody.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(1)(a), (1)(b); amd. Sec. 1, Ch. 385, L. 1979; amd. Sec. 7, Ch. 475, L. 1987; amd. Sec. 5, Ch. 515, L. 1987; (2) thru (6) En. Sec. 1, Ch. 475, L. 1987; amd. Sec. 2, Ch. 271, L. 1989; amd. Sec. 3, Ch. 547, L. 1991.

Cross-References

Rights of persons not adults, Art. II, sec. 15, Mont. Const.

Rights of the accused, Art. II, sec. 24, Mont. Const.

Taking into custody, 41-5-314.

Right to counsel, 41-5-511.

Persons to be advised of rights, 41-5-515.

Waiver of counsel, 46-8-102.

41-5-304. Investigation, fingerprints, and photographs. (1) All law enforcement investigations relating to a delinquent youth or youth in need of supervision must be conducted in accordance with this chapter and Title 46.

(2) A youth may be fingerprinted or photographed for criminal identification purposes:

(a) if arrested for conduct alleged to be unlawful that would be a felony if committed by an adult;

(b) pursuant to a search warrant, supported by probable cause, issued by a judge, justice of the peace, or magistrate; or

(c) upon the order of the youth court judge, after a petition alleging delinquency has been filed in which the unlawful act alleged would constitute a felony if the act had been committed by an adult.

(3) Fingerprint records and photographs may be used by the department of justice or any law enforcement agency in the judicial district for comparison and identification purposes in any other investigation.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(2); amd. Sec. 2, Ch. 484, L. 1981; amd. Sec. 6, Ch. 515, L. 1987; amd. Sec. 1, Ch. 346, L. 1991; amd. Sec. 1, Ch. 603, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 603 in (3), after "used by", inserted "the department of justice or".

Cross-References

Law enforcement records, 41-5-602.

Disposition of records, 41-5-604.

41-5-305. Criteria for placement of youth in secure detention facilities or shelter care facilities. (1) A youth may not be placed in a secure detention facility unless:

(a) he has allegedly committed an act that if committed by an adult would constitute a criminal offense and the alleged offense is one specified in 41-5-206;

(b) he is alleged to be a delinquent youth and:

(i) he has escaped from a correctional facility or secure detention facility;

(ii) he has violated a valid court order or an aftercare agreement;

(iii) his detention is required to protect persons or property;

(iv) he has pending court or administrative action or is awaiting a transfer to another jurisdiction and may abscond or be removed from the jurisdiction of the court;

(v) there are not adequate assurances that he will appear for court when required; or

(vi) he meets additional criteria for secure detention established by the youth court in the judicial district that has current jurisdiction over him; or

(c) he has been adjudicated delinquent and is awaiting final disposition of his case.

(2) A youth may not be placed in a shelter care facility unless:

(a) the youth and his family need shelter care to address their problematic situation when it is not possible for the youth to remain at home;

(b) the youth needs to be protected from physical or emotional harm;

(c) the youth needs to be deterred or prevented from immediate repetition of his troubling behavior;

(d) shelter care is necessary to assess the youth and his environment;

(e) shelter care is necessary to provide adequate time for case planning and disposition; or

(f) shelter care is necessary to intervene in a crisis situation and provide intensive services or attention that might alleviate the problem and reunite the family.

History: En. 10-1212 by Sec. 12, Ch. 329, L. 1974; amd. Sec. 4, Ch. 571, L. 1977; R.C.M. 1947, 10-1212; amd. Sec. 1, Ch. 689, L. 1985; amd. Sec. 8, Ch. 475, L. 1987; amd. Sec. 7, Ch. 515, L. 1987; amd. Sec. 1, Ch. 610, L. 1987; amd. Sec. 3, Ch. 548, L. 1991.

Cross-References

Detention, Art. II, sec. 23, Mont. Const.

Protective care, Title 41, ch. 3, part 3.

Montana Youth Court Act — declaration of purpose, 41-5-102.

Shelter care and detention facilities, 41-5-802.

Interstate Compact on Juveniles, Title 41, ch. 6, part 1.

41-5-306. Place of shelter care or detention. (1) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a youth in need of supervision may be placed only:

(a) in a licensed youth foster home as defined in 41-3-1102;

(b) in a facility operated by a licensed child welfare agency;

(c) in a licensed youth group home as defined in 41-3-1102; or

(d) under home arrest, either in the youth's own home or in one of the facilities described in subsections (1)(a) through (1)(c), as provided in Title 46, chapter 18, part 10.

(2) A youth alleged to be a youth in need of care may be placed only in the facilities listed in subsection (1) and may not be placed in a jail or other facility intended or used for the confinement of adults accused or convicted of criminal offenses.

(3) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a delinquent youth may be placed only in:

(a) the facilities described in subsection (1);

(b) under home arrest as provided in subsection (1);

(c) a short-term detention center; or

(d) a youth detention facility.

History: En. 10-1214 by Sec. 14, Ch. 329, L. 1974; amd. Sec. 6, Ch. 571, L. 1977; R.C.M. 1947, 10-1214; amd. Sec. 3, Ch. 465, L. 1983; amd. Sec. 2, Ch. 737, L. 1985; amd. Sec. 1, Ch. 11, Sp. L. June 1986; amd. Sec. 9, Ch. 475, L. 1987; amd. Sec. 5, Ch. 434, L. 1989; amd. Sec. 7, Ch. 105, L. 1991; amd. Sec. 5, Ch. 547, L. 1991; amd. Secs. 4, 5, Ch. 548, L. 1991; amd. Secs. 20, 21, Ch. 799, L. 1991; amd. Sec. 62, Ch. 10, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 10 in (3)(c) substituted "center" for "facility"; and made minor changes in style.

Cross-References

Juvenile detention center standards, 7-32-2244.

Shelter care and detention facilities, 41-5-802.

State grants for youth detention services, Title 41, ch. 5, part 10.

Corrections — youthful offenders, Title 52, ch. 5, part 1.

Hearing on alleged violation of aftercare agreement — right to appeal outcome, 52-5-129.

41-5-307. Release or delivery from custody. (1) Whenever a peace officer believes, on reasonable grounds, that a youth can be released to a person who has custody of the youth, then the peace officer may release the youth to that person upon receiving a written promise from the person to bring the youth before the probation officer at a time and place specified in the written promise, or a peace officer may release the youth under any other reasonable circumstances.

(2) Whenever the peace officer believes, on reasonable grounds, that the youth must be detained, the peace officer shall notify the probation officer immediately and shall, as soon as practicable, provide the probation officer with a written report of his reasons for holding the youth in detention. If it is necessary to hold the youth pending appearance before the youth court, then the youth must be held in a place of detention approved by the youth court. If

the peace officer believes that the youth must be sheltered, the peace officer shall notify the probation officer immediately and shall provide a written report of his reasons for placing the youth in shelter care. If the youth is then held, the youth must be placed in a shelter care facility approved by the youth court.

History: En. 10-1213 by Sec. 13, Ch. 329, L. 1974; amd. Sec. 1, Ch. 348, L. 1975; amd. Sec. 5, Ch. 571, L. 1977; R.C.M. 1947, 10-1213; amd. Sec. 7, Ch. 547, L. 1991.

Cross-References

Powers and duties of probation officers, 41-5-703.

Shelter care and detention facilities, 41-5-802.

Notice to appear, 46-6-310.

Release by officer of person arrested, 46-6-313.

Release on own recognizance, 46-9-111.

41-5-308. Repealed. Secs. 14, 16, Ch. 547, L. 1991.

History: En. Sec. 2, Ch. 475, L. 1987; amd. Sec. 6, Ch. 434, L. 1989; amd. Sec. 22, Ch. 799, L. 1991.

41-5-309. Bail. A youth placed in detention or shelter care may be released on bail. The court shall use the provisions of Title 46, chapter 9, as guidance. In determining the amount of bail, the court shall consider the financial ability of the youth and the parents or legal custodian of the youth.

History: En. Sec. 3, Ch. 475, L. 1987; amd. Sec. 8, Ch. 547, L. 1991.

Cross-References

Bail, Art. II, sec. 21, Mont. Const.

41-5-310. Detention of youth in need of supervision — prohibitions. A youth alleged or found to be a youth in need of supervision may not be placed in a jail, secure detention facility, or correctional facility.

History: En. Sec. 1, Ch. 548, L. 1991.

41-5-311. Youth not to be detained in jail — exceptions — time limitations. (1) A youth may not be detained or otherwise placed in a jail or other adult detention facility except as provided in 41-5-206 and this section.

(2) A youth who has allegedly committed an offense that, if committed by an adult, would constitute a criminal offense may be temporarily detained in a jail or other adult detention facility for a period not to exceed:

(a) 6 hours, but in no case overnight, for the purpose of identification, processing, or transfer of the youth to an appropriate detention facility or shelter care facility; or

(b) 24 hours, excluding weekends and legal holidays, if the youth is awaiting a probable cause hearing pursuant to 41-5-303.

(3) The exception provided for in subsection (2)(b) applies only if:

(a) the court having jurisdiction over the youth is outside a standard metropolitan statistical area;

(b) alternative facilities are not available or alternative facilities do not provide adequate security; and

(c) the youth is kept in an area that provides physical, as well as sight and sound, separation from adults accused or convicted of criminal offenses.

(4) Whenever, despite all good faith efforts to comply with the time limitations specified in subsection (2), the limitations are exceeded, this circumstance does not serve as grounds for dismissal of the case nor does this circumstance constitute a defense in a subsequent delinquency or criminal proceeding.

History: **En. Sec. 1, Ch. 547, L. 1991.**

41-5-312. Probable cause hearing — telephonic proceeding authorized. A probable cause hearing may be conducted by telephone if other means of conducting the hearing are impractical. All written orders and findings of the court in a hearing conducted by telephone must bear the name of the judge or magistrate presiding in the case and the hour and date the order or findings were issued.

History: **En. Sec. 4, Ch. 547, L. 1991.**

41-5-313. Permitted acts — detention of youth in law enforcement facilities — criteria. (1) Nothing in this chapter precludes the detention of youth in a police station or other law enforcement facility that is attached to or part of a jail if:

(a) the area where the youth is held is an unlocked, multipurpose area, such as a lobby, office, interrogation room, or other area that is not designated or used as a secure detention area or that is not part of a secure detention area, or, if part of such an area, that is used only for the purpose of processing, such as a booking room;

(b) the youth is not secured to a cuffing rail or other stationary object during the period of detention;

(c) use of the area is limited to ensuring custody of the youth for the purpose of identification, processing, or transfer of the youth to an appropriate detention or shelter care facility;

(d) the area is not designed or intended to be used for residential purposes; and

(e) the youth is under continuous visual supervision by a law enforcement officer or by facility staff during the period of time that the youth is held in detention.

(2) For purposes of this section, "secure detention" means the detention of youth or confinement of adults accused or convicted of criminal offenses in a physically restricting setting, including but not limited to a locked room or set of rooms or a cell designed to prevent a youth or adult from departing at will.

History: **En. Sec. 7, Ch. 548, L. 1991.**

41-5-314. Taking into custody. (1) A youth may be taken into custody under the following circumstances:

(a) by a law enforcement officer pursuant to a lawful order or process of any court;

(b) by a law enforcement officer pursuant to a lawful arrest for violation of the law;

(c) by a law enforcement officer, agent of the department, county attorney, or a person or physician treating a youth when there is reason to believe the youth is a youth in need of care and that the residence of the youth or the custody by the person legally responsible for the youth presents an imminent danger to the life or health of the youth.

(2) The taking of a youth into custody is not an arrest except for the purpose of determining the validity of the taking under the constitution of Montana or the United States.

History: En. 10-1211 by Sec. 11, Ch. 329, L. 1974; R.C.M. 1947, 10-1211; MCA 1981, 41-5-302; redes. 41-3-1111 by Sec. 31(4), Ch. 465, L. 1983; Sec. 41-3-1111, MCA 1989; redes. 41-5-314 by Sec. 15, Ch. 547, L. 1991.

Cross-References

Due process of law, Art. II, sec. 17, Mont. Const.

Responsibility of providing protective services, 41-3-302.

Method of arrest, 46-6-104.

Arrest by a peace officer, Title 46, ch. 6, part 4.

Detention of youth who violates aftercare agreement, 52-5-128.

Hearing on alleged violation of aftercare agreement — right to appeal outcome, 52-5-129.

41-5-315. Repealed. Sec. 27, Ch. 799, L. 1991.
History: En. Sec. 12, Ch. 434, L. 1989.

41-5-316. Repealed. Sec. 27, Ch. 799, L. 1991.
History: En. Sec. 13, Ch. 434, L. 1989.

Part 4
Informal Proceeding

Part Cross-References

Priority of Youth Court hearings, 41-5-110.

41-5-401. Consent adjustment without petition. (1) Before a petition is filed, the probation officer may enter into an informal adjustment and give counsel and advice to the youth and other interested parties if it appears:

(a) the admitted facts bring the case within the jurisdiction of the court;

(b) counsel and advice without filing a petition would be in the best interests of the child and the public; and

(c) the youth may be a youth in need of supervision and if the probation officer believes that the parents, foster parents, physical custodian, or guardian exerted all reasonable efforts to mediate, resolve, or control the youth's behavior and the youth continues to exhibit behavior beyond the control of the parents, foster parents, physical custodian, or guardian.

(2) Any probation or other disposition imposed under this section against any youth must conform to the following procedures:

(a) Every consent adjustment shall be reduced to writing and signed by the youth and his parents or the person having legal custody of the youth.

(b) If the probation officer believes the youth is a youth in need of supervision, the probation officer shall determine that the parents, foster parents, physical custodian, or guardian exerted all reasonable efforts to mediate, resolve, or control the youth's behavior and the youth continues to exhibit behavior beyond the control of the parents, foster parents, physical custodian, or guardian.

(c) Approval by the youth court judge is required if the complaint alleges commission of a felony or if the youth has been or will be in any way detained.

History: En. 10-1210 by Sec. 10, Ch. 329, L. 1974; amd. Sec. 4, Ch. 100, L. 1977; amd. Sec. 3, Ch. 571, L. 1977; R.C.M. 1947, 10-1210(1), (2); amd. Sec. 2, Ch. 231, L. 1991.

Cross-References

Youth Court Judge, 41-5-201.

Jurisdiction of the court, 41-5-203.

Preliminary investigation and disposition, 41-5-301.

Powers and duties of probation officers, 41-5-703.

41-5-402. Communications privileged. An incriminating statement relating to any act or omission constituting delinquency or need of supervision made by the participant to the person giving counsel or advice in the discussions or conferences incident thereto may not be used against the declarant in any proceeding under this chapter, nor may the incriminating statement be admissible in any criminal proceeding against the declarant. This section does not apply to the use of voluntary and reliable statements that are offered for impeachment purposes.

History: En. 10-1210 by Sec. 10, Ch. 329, L. 1974; amd. Sec. 4, Ch. 100, L. 1977; amd. Sec. 3, Ch. 571, L. 1977; R.C.M. 1947, 10-1210(3); amd. Sec. 8, Ch. 515, L. 1987.

Cross-References

Self-incrimination and double jeopardy, Art. II, sec. 25, Mont. Const.

Policy to protect confidentiality in certain relations, 26-1-801.

Confidential communications made to public officer, 26-1-810.

41-5-403. Disposition permitted under informal adjustment — contributions by parents or guardians for youth's care. (1) The following dispositions may be imposed by informal adjustment:

(a) probation;

(b) placement of the youth in substitute care in a youth care facility, as defined in 41-3-1102, and as determined by the department;

(c) placement of the youth with a private agency responsible for the care and rehabilitation of the youth as determined by the department;

(d) restitution upon approval of the youth court judge;

(e) placement of the youth under home arrest as provided in Title 46, chapter 18, part 10.

(2) In determining whether restitution is appropriate in a particular case, the following factors may be considered in addition to any other evidence:

(a) age of the youth;

(b) ability of the youth to pay;

(c) ability of the parents or legal guardian to pay;

(d) amount of damage to the victim; and

(e) legal remedies of the victim; however, the ability of the victim or his insurer to stand any loss may not be considered in any case.

(3) If the youth violates an aftercare agreement as provided for in 52-5-126, he must be returned to the court for further disposition. A youth may not be placed in a state youth correctional facility under informal adjustment.

(4) If the youth is placed in substitute care requiring payment by the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, placement, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(5) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (4), the court shall order the youth's parents or guardians to pay an amount based on the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant to 40-5-209.

(6) (a) Except as provided in subsection (6)(b), contributions ordered under this section and each modification of an existing order are enforceable

by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the child; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(7) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of social and rehabilitation services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of social and rehabilitation services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4.

History: En. 10-1210 by Sec. 10, Ch. 329, L. 1974; amd. Sec. 4, Ch. 100, L. 1977; amd. Sec. 3, Ch. 571, L. 1977; R.C.M. 1947, 10-1210(4); amd. Sec. 3, Ch. 246, L. 1979; amd. Sec. 3, Ch. 484, L. 1981; amd. Sec. 1, Ch. 129, L. 1983; amd. Sec. 7, Ch. 363, L. 1983; amd. Sec. 4, Ch. 465, L. 1983; amd. Sec. 5, Ch. 531, L. 1985; amd. Sec. 7, Ch. 14, Sp. L. June 1986; amd. Sec. 59, Ch. 609, L. 1987; amd. Sec. 8, Ch. 105, L. 1991; amd. Sec. 3, Ch. 696, L. 1991.

Cross-References

Destruction of property by minor — liability of parents, 40-6-237.

Montana Youth Court Act — declaration of purpose, 41-5-102.

Retention of jurisdiction, 41-5-205.

Youthful offenders — Department of Family Services, Title 52, ch. 5, part 1.

Part 5
Proceeding on Petition

Part Cross-References

Priority of Youth Court hearings, 41-5-110.

41-5-501. Petition — form and content. A petition initiating proceedings under this chapter shall be signed by the county attorney and shall be entitled "In the Matter of ...., a youth" and shall set forth with specificity:

(1) the facts necessary to invoke the jurisdiction of the court, together with a statement alleging the youth to be a delinquent or in need of supervision;

(2) the charge of an offense, which shall:

(a) state the name of the offense;

(b) cite in customary form the statute, rule, or other provisions of law which the youth is alleged to have violated;

(c) state the facts constituting the offense in ordinary and concise language and in such manner as to enable a person of common understanding to know what is intended; and

(d) state the time and place of the offense as definitely as can be done;

(3) the name, birth date, and residence address of the youth;

(4) the names and residence addresses of parents, guardian, and spouse of the youth and, if none of the parents, guardian, or spouse resides or can be found within the state or if there is none, the adult relative residing nearest to the court;

(5) whether the youth is in detention or shelter care and, if so, the place of detention or shelter care and the time he was detained or sheltered;

(6) if any of the matters required to be set forth by this section are not known, a statement of those matters and the fact that they are not known; and

(7) a list of witnesses to be used in proving the commission of the offense or offenses charged in the petition, together with their residence addresses. The names and addresses of any witnesses discovered after the filing of the petition shall be furnished to the youth upon request.

History: En. 10-1215 by Sec. 15, Ch. 329, L. 1974; amd. Sec. 7, Ch. 571, L. 1977; R.C.M. 1947, 10-1215.

Cross-References

Rights of the accused, Art. II, sec. 24, Mont. Const.

Jurisdiction of the court, 41-5-203.

Duty of court at initial appearance, 46-7-102.

Form of charge, 46-11-401.

41-5-502. Summons. (1) After a petition has been filed, summons must be served directly to:

(a) the youth;

(b) his parent or parents having actual custody of the youth or his guardian or custodian, as the case may be; and

(c) other persons as the court may direct.

(2) The summons must:

(a) require the parties to whom it is directed to appear personally before the court at the time fixed by the summons to answer the allegations of the petition;

(b) advise the parties of their right to counsel under the Montana Youth Court Act; and

(c) have attached to it a copy of the petition.

(3) The court may endorse upon the summons an order directing the person or persons having the physical custody or control of the youth to bring the youth to the hearing.

(4) If it appears to the court that the youth needs to be placed in detention or shelter care, the judge may endorse on the summons an order directing the officer serving the summons to at once take the youth into custody and to take

him to the place of detention or shelter care designated by the court, subject to the rights of the youth and parent or person having legal custody of the youth as set forth in the provisions of the Montana Youth Court Act relating to detention and shelter care criteria and postdetention proceedings.

(5) If any youth is placed in detention or shelter care under any provision of this chapter pending an adjudication, the court shall, as soon as practicable, conduct a probable cause hearing as provided in 41-5-303.

(6) The youth court judge may also admit the youth to bail in accordance with Title 46, chapter 9.

History: En. 10-1216 by Sec. 16, Ch. 329, L. 1974; amd. Sec. 8, Ch. 571, L. 1977; R.C.M. 1947, 10-1216; amd. Sec. 10, Ch. 475, L. 1987; amd. Sec. 9, Ch. 515, L. 1987; amd. Sec. 9, Ch. 547, L. 1991.

Cross-References

Habeas corpus, Art. II, sec. 19, Mont. Const.; Title 46, ch. 22.

Rights of the accused, Art. II, sec. 24, Mont. Const.

Shelter care and detention facilities, 41-5-802.

Summons, Title 46, ch. 6, part 3.

41-5-503. Service of summons. (1) Any youth who is the subject of a proceeding under this chapter must be personally served with summons at least 5 days before the time stated for appearance.

(2) Service of summons on all other persons designated in 41-5-502(1) shall be made in accordance with Rule 4D of the Montana Rules of Civil Procedure, except that in all cases service shall be completed at least 5 days before the time stated for appearance.

(3) If a party referred to in subsection (2) herein is not personally served before a hearing and has not secluded himself with an attempt to delay or disrupt any proceeding, such party may appear within a reasonable time subsequent to the hearing and, on motion to the court, request a rehearing. The motion may be granted at the discretion of the judge if a rehearing would be in the best interest of the youth.

(4) The court may authorize payment from county funds of costs of service and necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing.

(5) An actual abandonment of a youth by his parent or parents shall constitute a waiver of summons and notice requirements by the parent or parents. A return endorsed upon the summons showing inability to serve summons constitutes prima facie evidence of actual abandonment.

(6) The youth court may, in the interests of justice, shorten the notice requirements contained herein, and such notice of shortened time shall be endorsed on the summons.

(7) A party, other than the youth, may waive service of summons on himself by written stipulation or by voluntary appearance at the hearing. If the youth is present at the hearing, his counsel may waive service of summons in his behalf.

History: En. 10-1217 by Sec. 17, Ch. 329, L. 1974; amd. Sec. 5, Ch. 100, L. 1977; R.C.M. 1947, 10-1217.

Cross-References

Motions and other papers, Rule 7(b), M.R.Civ.P. (see Title 25, ch. 20).

Parent may relinquish services and custody of child, 40-6-235.

Court costs and expenses, 41-5-207.

41-5-504 through 41-5-510 reserved.

41-5-511. Right to counsel. In all proceedings following the filing of a petition alleging a delinquent youth or youth in need of supervision, the youth and the parents or guardian of the youth shall be advised by the court or, in the absence of the court, by its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained or if it appears that counsel will not be retained, counsel shall be appointed for the youth if the parents and the youth are unable to provide counsel unless the right to appointed counsel is waived by the youth and the parents or guardian. Neither the youth nor his parent or guardian may waive counsel after a petition has been filed if commitment to the department for a period of more than 6 months may result from adjudication.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(3); amd. Sec. 1, Ch. 386, L. 1979; amd. Sec. 4, Ch. 484, L. 1981; amd. Sec. 60, Ch. 609, L. 1987.

Cross-References

Rights of the accused, Art. II, sec. 24, Mont. Const.

Representation of child, 40-4-205.

Right to counsel, 46-8-101.

Waiver of counsel, 46-8-102.

41-5-512. Appointment of guardian ad litem. The court at any stage of a proceeding on a petition under this chapter may appoint a guardian ad litem for a youth if the youth has no parent or guardian appearing in his behalf or if their interests conflict with those of the youth. A party to the proceeding or an employee or representative of a party may not be appointed as guardian ad litem.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(4).

Cross-References

Appointment of guardian ad litem, 25-5-301.

Parties to paternity proceedings, 40-6-110.

Guardian ad litem, 41-3-303.

41-5-513. Right to confront witnesses. In a proceeding on a petition, a party is entitled to:

(1) the opportunity to introduce evidence and otherwise be heard on the party's own behalf;

(2) confront and cross-examine witnesses testifying against the party; and

(3) admit or deny the allegations against the party in the petition.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(5).

Cross-References

Rights of the accused, Art. II, sec. 24, Mont. Const.

41-5-514. Admissibility of confession or illegally seized evidence. In a proceeding alleging a youth to be a delinquent youth:

(1) an extrajudicial statement that would be constitutionally inadmissible in a criminal matter may not be received in evidence;

(2) evidence illegally seized or obtained may not be received in evidence to establish the allegations of a petition against a youth; and

(3) an extrajudicial admission or confession made by the youth out of court is insufficient to support a finding that the youth committed the acts alleged in the petition unless it is corroborated by other evidence.

History: **En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(1)(c).**

Cross-References

Rights of the accused, Art. II, sec. 24, Mont. Const.

Self-incrimination and double jeopardy, Art. II, sec. 25, Mont. Const.

Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time, Rule 403, M.R.Ev. (see Title 26, ch. 10).

Waiver of privilege by voluntary disclosure, Rule 503, M.R.Ev. (see Title 26, ch. 10).

Fingerprints and photographs, 41-5-304.

Communications privileged, 41-5-402.

Search and seizure — legality and admissibility, Title 46, ch. 5, part 1.

Testimony of person legally accountable, 46-16-213.

41-5-515. Persons to be advised of rights. Persons afforded rights under this chapter shall be advised of those rights and any other rights existing under law at the time of their first appearance in a proceeding on a petition under the Montana Youth Court Act and at any other time specified in that act or other law.

History: **En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(6).**

Cross-References

Rights of persons not adults, Art. II, sec. 15, Mont. Const.

Rights of the accused, Art. II, sec. 24, Mont. Const.

Rights of youth upon apprehension, 41-5-303.

Duty of court at initial appearance, 46-7-102.

41-5-516. Repealed. Sec. 16, Ch. 515, L. 1987.

History: **En. 10-1219 by Sec. 19, Ch. 329, L. 1974; R.C.M. 1947, 10-1219; amd. Sec. 1, Ch. 215, L. 1979; amd. Sec. 1, Ch. 158, L. 1983.**

41-5-517 through 41-5-520 reserved.

41-5-521. Adjudicatory hearing. (1) Prior to any adjudicatory hearing, the court shall determine whether the youth admits or denies the offenses alleged in the petition. If the youth denies all offenses alleged in the petition, the youth, his parent, guardian, or attorney may demand a jury trial on such contested offenses. In the absence of such demand, a jury trial is waived. If the youth denies some offenses and admits others, the contested offenses may be dismissed in the discretion of the youth court judge. The adjudicatory hearing shall be set immediately and accorded a preferential priority.

(2) An adjudicatory hearing shall be held to determine whether the contested offenses are supported by proof beyond a reasonable doubt in cases involving a youth alleged to be delinquent or in need of supervision. If the hearing is before a jury, the jury's function shall be to determine whether the youth committed the contested offenses. If the hearing is before the youth court judge without a jury, the judge shall make and record his findings on all issues. If the allegations of the petitions are not established at the hearing, the youth court shall dismiss the petition and discharge the youth from custody.

(3) An adjudicatory hearing shall be recorded verbatim by whatever means the court considers appropriate.

(4) The youth charged in a petition must be present at the hearing and, if brought from detention to the hearing, may not appear clothed in institutional clothing.

(5) In a hearing on a petition under this section, the general public may not be excluded when the hearing is held on a contested offense to which publicity must be allowed under subsection (2) of 41-5-601.

(6) If, on the basis of a valid admission by a youth of the allegations of the petition or after the hearing required by this section, a youth is found to be a delinquent youth or a youth in need of supervision, the court shall schedule a dispositional hearing under this chapter.

(7) When a jury trial is required in a case, it may be held before a jury selected as provided in Title 25, chapter 7, part 2, and M.R.Civ.P., Rule 47.

History: En. 10-1220 by Sec. 20, Ch. 329, L. 1974; amd. Sec. 7, Ch. 100, L. 1977; amd. Sec. 1, Ch. 344, L. 1977; R.C.M. 1947, 10-1220; amd. Sec. 1, Ch. 668, L. 1979; amd. Sec. 1, Ch. 469, L. 1981.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Trial by jury, Art. II, sec. 26, Mont. Const.
Sittings of court — when private, 3-1-313.
Copies of proceedings, 3-5-604.
Reporter's report prima facie evidence, 3-5-612.
Publicity, 41-5-601.

41-5-522. Dispositional hearing. (1) As soon as practicable after a youth is found to be a delinquent youth or a youth in need of supervision, the court shall conduct a dispositional hearing. The dispositional hearing may involve a determination of the financial ability of the youth's parents or guardians to pay a contribution for the cost of care, commitment, and treatment of the youth as required in 41-5-523.

(2) Before conducting the dispositional hearing, the court shall direct that a social summary or predisposition report be made in writing by a probation officer concerning the youth, his family, his environment, and other matters relevant to the need for care or rehabilitation or disposition of the case. The youth court may have the youth examined, and the results of the examination shall be made available to the court as part of the social summary or predisposition report. The court may order the examination of a parent or guardian whose ability to care for or supervise a youth is at issue before the court. The results of such examination shall be included in the social summary or predisposition report. The youth, his parents, guardian, or counsel shall have the right to subpoena all persons who have prepared any portion of the social summary or predisposition report and shall have the right to cross-examine said parties at the dispositional hearing.

(3) Defense counsel shall be furnished with a copy of the social summary or predisposition report and psychological report prior to the dispositional hearing.

(4) The dispositional hearing shall be conducted in the manner set forth in subsections (3), (4), and (5) of 41-5-521. The court shall hear all evidence relevant to a proper disposition of the case best serving the interests of the youth and the public. Such evidence shall include but not be limited to the social summary and predisposition report provided for in subsection (2) of this section.

(5) If the court finds that it is in the best interest of the youth, the youth, his parents, or guardian may be temporarily excluded from the hearing during the taking of evidence on the issues of need for treatment and rehabilitation.

(6) In determining whether restitution, as authorized by 41-5-523, is appropriate in a particular case, the following factors may be considered in addition to any other evidence:

(a) age of the youth;

(b) ability of the youth to pay;

(c) ability of the parents or legal guardian to pay;

(d) amount of damage to the victim; and

(e) legal remedies of the victim; however, the ability of the victim or his insurer to stand any loss may not be considered in any case.

History: En. 10-1221 by Sec. 21, Ch. 329, L. 1974; R.C.M. 1947, 10-1221; amd. Sec. 4, Ch. 246, L. 1979; amd. Sec. 9, Ch. 567, L. 1979; amd. Sec. 5, Ch. 484, L. 1981; amd. Sec. 31, Ch. 465, L. 1983; amd. Sec. 10, Ch. 515, L. 1987; amd. Sec. 61, Ch. 609, L. 1987; amd. Sec. 10, Ch. 696, L. 1991.

Cross-References

Sittings of court — when private, 3-1-313.

Montana Youth Court Act — declaration of purpose, 41-5-102.

Disposition permitted under informal adjustment, 41-5-403.

Powers and duties of probation officers, 41-5-703.

Subpoena of witnesses, 46-11-313.

41-5-523. Disposition — commitment to department — placement and evaluation of youth — restrictions. (1) If a youth is found to be a delinquent youth or a youth in need of supervision, the youth court may enter its judgment making any of the following dispositions:

(a) place the youth on probation;

(b) commit the youth to the department if the court determines that the youth is in need of placement in other than the youth's own home, provided that:

(i) the court shall determine whether continuation in the home would be contrary to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from the youth's home. The court shall include a determination in the order committing the youth to the department.

(ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge finds that the placement is necessary for the protection of the public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a youth correctional facility. Once a youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release into an appropriate placement.

(c) order restitution by the youth or the youth's parents;

(d) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult;

(e) require the performance of community service;

(f) require the youth, the youth's parents or guardians, or the persons having legal custody of the youth to receive counseling services;

(g) require the medical and psychological evaluation of the youth, the youth's parents or guardians, or the persons having legal custody of the youth;

(h) require the parents, guardians, or other persons having legal custody of the youth to furnish services the court may designate;

(i) order further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community and that does not obligate funding from the department without the department's approval, except that a youth may not be placed by a youth court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to subsection (1)(b), place a youth in a residential treatment facility.

(j) commit the youth to a mental health facility if, based upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119. A youth adjudicated mentally ill or seriously mentally ill as defined in 53-21-102 may not be committed to a state youth correctional facility. A youth adjudicated to be mentally ill or seriously mentally ill after placement by the department in a state youth correctional facility must be moved to a more appropriate placement in response to the youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.

(k) place the youth under home arrest as provided in Title 46, chapter 18, part 10.

(2) When a youth is committed to the department, the department shall determine the appropriate placement and rehabilitation program for the youth after considering the recommendations made under 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

(a) A youth in need of supervision or adjudicated delinquent for commission of an act that would not be a criminal offense if committed by an adult may not be placed in a state youth correctional facility.

(b) A youth may not be held in a state youth correctional facility for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. Nothing in this section limits the power of the department to enter into an aftercare agreement with the youth pursuant to 52-5-126.

(c) A youth may not be placed in or transferred to a penal institution or other facility used for the execution of sentence of adults convicted of crimes.

(3) A youth placed by the department in a state youth correctional facility or other facility or program operated by the department or who signs an aftercare agreement under 52-5-126 must be supervised by the department. A youth who is placed in any other placement by the department, the youth court, or the youth court's juvenile probation officer must be supervised by the probation officer of the youth court having jurisdiction over the youth under 41-5-205 whether or not the youth is committed to the department. Supervision by the youth probation officer includes but is not limited to:

(a) submitting information and documentation necessary for the person, committee, or team that is making the placement recommendation to determine an appropriate placement for the youth;

(b) securing approval for payment of special education costs from the youth's school district of residence or the office of public instruction, as required in Title 20, chapter 7, part 4;

(c) submitting an application to a facility in which the youth may be placed; and

(d) case management of the youth.

(4) The youth court may order a youth to receive a medical or psychological evaluation at any time prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in 41-5-303. The county determined by the court as the residence of the youth is responsible for the cost of the evaluation, except as provided in subsection (5). A county may contract with the department or other public or private agencies to obtain evaluation services ordered by the court.

(5) The youth court shall determine the financial ability of the youth's parents to pay the cost of an evaluation ordered by the court under subsection (4). If they are financially able, the court shall order the youth's parents to pay all or part of the cost of the evaluation.

(6) The youth court may not order placement or evaluation of a youth at a state youth correctional facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that is transferable to criminal court under 41-5-206.

(7) An evaluation of a youth may not be performed at the Montana state hospital unless the youth is transferred to the district court under 41-5-206.

(8) An order of the court may be modified at any time. In the case of a youth committed to the department, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

(9) Whenever the court commits a youth to the department, it shall transmit with the dispositional judgment copies of medical reports, social history material, education records, and any other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

(10) If a youth is committed to the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, commitment, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(11) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (10), the court shall order the youth's parents or guardians to pay an amount based on the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant to 40-5-209.

(12) (a) Except as provided in subsection (12)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the child; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(13) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under subsection (11).

(14) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of social and rehabilitation services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of social and rehabilitation services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4.

History: En. 10-1222 by Sec. 22, Ch. 329, L. 1974; amd. Sec. 10, Ch. 571, L. 1977; R.C.M. 1947, 10-1222; amd. Sec. 2, Ch. 29, L. 1979; amd. Sec. 5, Ch. 246, L. 1979; amd. Sec. 2, Ch. 129, L. 1983; amd. Sec. 2, Ch. 233, L. 1983; amd. Sec. 27, Ch. 361, L. 1983; amd. Sec. 8, Ch. 363, L. 1983; amd. Sec. 5, Ch. 465, L. 1983; amd. Sec. 6, Ch. 531, L. 1985; amd. Sec. 1, Ch. 612, L. 1985; amd. Sec. 8, Ch. 14, Sp. L. June 1986; amd. Sec. 101, Ch. 370, L. 1987; amd. Sec. 11, Ch. 515, L. 1987; amd. Sec. 62, Ch. 609, L. 1987; amd. Sec. 1, Ch. 172, L. 1989; amd. Sec. 1, Ch. 210, L. 1989; amd. Sec. 7, Ch. 434, L. 1989; amd. Sec. 5, Ch. 616, L. 1989; amd. Sec. 9, Ch. 105, L. 1991; amd. Sec. 1, Ch. 201, L. 1991; amd. Sec. 1, Ch. 511, L. 1991; amd. Sec. 4, Ch. 696, L. 1991; amd. Sec. 1, Ch. 358, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 358 at beginning of (1)(b)(i) deleted "in the case of a youth in need of supervision"; inserted second and third sentences of (1)(b)(ii) regarding notification of court of potential release date and clarifying Department's responsibility for determining appropriate release date; in (1)(j) substituted third and fourth sentences regarding placement of mentally ill youths for former third sentence that read: "Upon release or discharge from the mental health facility, the youth must be returned to the court for further disposition in accordance with this section unless the court order has expired or the court no longer retains jurisdiction under 41-5-205"; in (2)(a), after "supervision", inserted "or adjudicated delinquent for commission of an act that would not be a criminal offense if committed by an adult"; in first sentence of (3), after "facility", inserted "or other facility or program operated by the department or who signs an aftercare agreement under 52-2-126" and in second sentence, after "placement", inserted "by the department, the youth court, or the youth court's juvenile probation officer" and near end inserted "under 41-5-205"; in (9) substituted "medical reports, social history material, education records" for "a medical report"; and made minor changes in style. Amendment effective April 16, 1993.

Cross-References

Retention of jurisdiction, 41-5-205.

Disposition permitted under informal adjustment, 41-5-403.

Powers and duties of probation officers, 41-5-703.

Unlawful possession of an intoxicating substance by children, 45-5-624.

Youthful offenders, Title 52, ch. 5, part 1.

Transfer of child to other facility or institution, 52-5-110.

41-5-524. Consent decree with petition. (1) At any time after the filing of a petition alleging that a youth is a delinquent youth or a youth in need of supervision and before the entry of a judgment, the court may, on motion of counsel for the youth or on the court's own motion, suspend the proceedings and continue the youth under supervision under terms and conditions negotiated with probation services and agreed to by all necessary parties. The court's order continuing the child under supervision under this section shall be known as a "consent decree". The procedures used and dispositions permitted under this section shall conform to the procedures and dispositions specified in 41-5-401 through 41-5-403 relating to consent adjustments without petition and the responsibility of the youth's parents or guardians to pay a contribution for the costs of placement in substitute care.

(2) If the youth or his counsel objects to a consent decree, the court shall proceed to findings, adjudication, and disposition of the case.

(3) If, either prior to discharge by probation services or expiration of the consent decree, a new petition alleging that the youth is a delinquent youth or a youth in need of supervision is filed against the youth or if the youth fails to fulfill the expressed terms and conditions of the consent decree, the petition under which the youth was continued under supervision may be reinstated in the discretion of the county attorney in consultation with probation services. In the event of reinstatement, the proceeding on the petition shall be continued to conclusion as if the consent decree had never been entered.

(4) A youth who is discharged by probation services or who completes a period under supervision without reinstatement of the original petition may not again be proceeded against in any court for the same offense alleged in the petition, and the original petition shall be dismissed with prejudice. Nothing in this subsection precludes a civil suit against the youth for damages arising from his conduct.

(5) In all cases where the terms of the consent decree shall extend for a period in excess of 6 months, the probation officer shall at the end of each 6-month period submit a report which shall be reviewed by the court.

History: En. 10-1224 by Sec. 24, Ch. 329, L. 1974; amd. Sec. 8, Ch. 100, L. 1977; R.C.M. 1947, 10-1224; amd. Sec. 5, Ch. 696, L. 1991.

Cross-References

Self-incrimination and double jeopardy, Art. II, sec. 25, Mont. Const.

Liability of minor or person of unsound mind for own torts, 27-1-711.

Retention of jurisdiction, 41-5-205.

Preliminary investigation and disposition, 41-5-301.

Powers and duties of probation officers, 41-5-703.

41-5-525. Youth placement committees — composition. (1) In each judicial district, the department shall establish a youth placement committee for the purposes of recommending an appropriate placement of a youth referred to the department under 41-5-403 or committed to the department under 41-5-523.

(2) The committee consists of not less than five members, appointed by the department, and must include:

(a) a representative of the department;

(b) a representative of a county department of public welfare;

(c) a youth probation officer;

(d) a mental health professional;

(e) a representative of a school district located within the boundaries of the judicial district; and

(f) if an Indian child or children are involved, someone, preferably an Indian person, knowledgeable about Indian culture and family matters.

(3) Committee members serve without compensation.

History: En. Sec. 15, Ch. 609, L. 1987; amd. Sec. 2, Ch. 67, L. 1989.

Cross-References

Educational goals and duties — recognition of Indian cultural heritage, Art. X, Sec. 1(2), Mont. Const.

41-5-526. Duties of the youth placement committee. A youth placement committee shall:

(1) review all information relevant to the placement of a youth referred or committed to the department;

(2) consider available resources appropriate to meet the needs of the youth;

(3) consider the treatment recommendations of any professional person who has evaluated the youth;

(4) recommend in writing to the department an appropriate placement for the youth, considering the age and treatment needs of the youth and the relative costs of care in facilities considered appropriate for placement. A committee shall consider placement in a licensed facility, at Mountain View school, at Pine Hills school, or with a parent, other family member, or guardian.

(5) review temporary and emergency placements as required under 41-5-528; and

(6) conduct placement reviews as requested by the department.

History: En. Sec. 16, Ch. 609, L. 1987; amd. Sec. 1, Ch. 399, L. 1989.

41-5-527. Youth placement committee to submit recommendation to department — acceptance or rejection of recommendation by department. (1) When a youth has been referred or committed to the department for placement, the department shall notify the appropriate youth placement committee. The committee shall submit in writing to the department its recommendation for placement of the youth. The committee shall send a copy of the recommendation to the appropriate youth court judge.

(2) If the department accepts the committee's recommendation, the youth must be placed according to the recommendation.

(3) If the department rejects the committee's recommendation, it shall promptly notify the committee in writing of the reasons for rejecting the recommendation. The department shall send a copy of the notice to the appropriate youth court judge.

(4) After receiving a notice under subsection (3), the committee shall submit in writing to the department a recommendation for an alternative placement of the youth.

(5) If the department accepts the committee's recommendation for alternative placement, the youth must be placed according to the recommendation.

(6) If the department rejects the committee's recommendation for alternative placement, the department shall promptly notify the committee in writing of the reasons for rejecting the recommendation and shall determine an appropriate placement for the youth. The youth must be placed as determined by the department.

History: En. Sec. 17, Ch. 609, L. 1987; amd. Sec. 2, Ch. 399, L. 1989.

41-5-528. Temporary and emergency placements — limit. (1) A temporary placement of a youth in a shelter care facility or an emergency placement of a youth in a youth care facility is exempt from the requirements of 41-5-527.

(2) If a temporary or emergency placement of a youth continues for 45 or more days, the department shall refer the placement of the youth to the appropriate youth placement committee for review. The committee shall make a recommendation for placement to the department in accordance with 41-5-527.

History: En. Sec. 18, Ch. 609, L. 1987.

41-5-529. Confidentiality of youth placement committee meetings and records. (1) Meetings of a youth placement committee are closed to the public to protect a youth's right to individual privacy.

(2) Information presented to the committee about a youth and committee records are confidential and subject to confidentiality requirements established by rule by the department.

History: En. Sec. 19, Ch. 609, L. 1987.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

41-5-530. Parental contributions account — allocation of proceeds. (1) There is a parental contributions account in the state special revenue fund.

(2) Contributions paid by the parents and guardians of youth under 41-3-406, 41-5-403, 41-5-523, or 41-5-524 must be deposited in the account.

(3) All money in the account, except any amount required to be returned to federal or county sources, is allocated to the department to carry out its duties under 52-1-103.

History: En. Sec. 6, Ch. 696, L. 1991.

41-5-531. Posttrial motions. All posttrial motions and other remedies available to an adult in a criminal proceeding under the Montana Code of Criminal Procedure are available to a youth proceeded against under this chapter.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(7).

Cross-References

Motion for new trial, Title 46, ch. 16, part 7.

Appellate review of legal sentences, Title 46, ch. 18, part 9.

Postconviction hearing, Title 46, ch. 21.

41-5-532. Appeals. (1) Any party other than the state may appeal from a judgment of the court to the supreme court in the manner provided by law.

The appeal shall be heard by the supreme court upon the files, records, and transcript of the evidence of the juvenile court.

(2) The appeal to the supreme court does not stay the judgment appealed from, but the supreme court may order a stay upon application and hearing consistent with the provisions of this chapter if suitable provision is made for the care and custody of the youth. If the order appealed from grants the legal custody of the youth to or withholds it from one or more of the parties to the appeal, the appeal shall be heard at the earliest practicable time.

History: En. 10-1225 by Sec. 25, Ch. 329, L. 1974; R.C.M. 1947, 10-1225.

Cross-References

Supreme Court — appellate jurisdiction, 3-2-203.

Appeals, Title 46, ch. 20.

41-5-533. Probation revocation — disposition. (1) A youth on probation incident to an adjudication that he is a delinquent youth or a youth in need of supervision and who violates a term of such probation may be proceeded against in a probation revocation proceeding. A proceeding to revoke probation shall be done by filing in the original proceeding a petition styled "petition to revoke probation".

(2) Petitions to revoke probation shall be screened, reviewed, and prepared in the same manner and shall contain the same information as petitions alleging delinquency or need of supervision. Procedures of the Montana Youth Court Act regarding taking into custody and detention shall apply. The petition shall state the terms of probation alleged to have been violated and the factual basis for such allegations.

(3) The standard of proof in probation revocation proceedings is the same standard used in probation revocation of an adult and the hearing shall be before the youth court without a jury. In all other respects proceedings to revoke probation are governed by the procedures, rights, and duties applicable to proceedings on petitions alleging that the youth is delinquent or a youth in need of supervision. If a youth is found to have violated a term of his probation, the youth court may make any judgment of disposition that could have been made in the original case.

History: En. 10-1228 by Sec. 28, Ch. 329, L. 1974; R.C.M. 1947, 10-1228.

Cross-References

Petition — form and content, 41-5-501.

Powers and duties of probation officers, 41-5-703.

Arrest when violations of probation alleged, 46-23-1012.

Action of court after arrest, 46-23-1013.

Report to and action by the Board, 46-23-1025.

Part 6

Confidentiality of Proceedings — Records

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

41-5-601. Confidentiality. (1) No information shall be given concerning a youth or any matter or proceeding in the youth court involving a youth proceeded against as, or found to be, a youth in need of supervision.

(2) When a petition is filed under 41-5-501, publicity may not be withheld regarding any youth formally charged with or proceeded against as or found

to be a delinquent youth as a result of the commission of any offense that would be punishable as a felony if the youth were an adult. All court proceedings must be open to the public with the exception of the transfer hearing specified in 41-5-206 if the youth court finds that a failure to close the hearing would jeopardize the right of the youth to a fair trial.

(3) In all cases the victim is entitled to all information concerning the identity and disposition of the youth.

(4) The identity of any youth who admits violating or is adjudicated as having violated 45-5-624 or 45-9-102 may be disclosed by youth court officials to the administrative officials of the school in which the youth is a student for purposes of referral for enrollment in a substance abuse program or enforcement of school disciplinary procedures that existed at the time of the admission or adjudication. The information may not be further disclosed and may not be made part of the student's permanent records.

History: **En. 10-1241 by Sec. 41, Ch. 329, L. 1974; R.C.M. 1947, 10-1241; amd. Sec. 2, Ch. 469, L. 1981; amd. Sec. 10, Ch. 15, L. 1985; amd. Sec. 1, Ch. 462, L. 1987; amd. Sec. 12, Ch. 515, L. 1987.**

Cross-References

Sittings of court — when private, 3-1-313.

Child abuse, neglect, and dependency — confidentiality of case records, 41-3-205.

Classification of offenses, 45-1-201.

Felony defined, 45-2-101.

41-5-602. Law enforcement records. (1) No law enforcement records concerning a youth, except traffic records, may be open to public inspection or their contents disclosed to the public unless the records are directly related to an offense to which publicity must be allowed under subsection (2) of 41-5-601 or unless inspection is ordered by the court.

(2) Inspection of law enforcement records concerning a youth, which records are not open to public inspection under subsection (1), is permitted prior to the sealing of the records by:

(a) a youth court having the youth currently before it in any proceeding;

(b) the department if it is investigating, supervising, or providing services to the youth;

(c) the officers of agencies having legal custody of the youth and those responsible for his supervision after release;

(d) any other person, by order of the court, having a legitimate interest in the case or in the work of the law enforcement agency;

(e) law enforcement officers of Montana, when necessary for the discharge of their immediate duties;

(f) a district court in which the youth is convicted of a criminal offense, for the purpose of a presentence investigation;

(g) the county attorney;

(h) the youth, his parent, guardian, or counsel;

(i) a member of a county interdisciplinary child information team formed under 52-2-211 who is not listed in subsection (2); or

(j) members of a local interagency staffing group provided for in 52-2-203.

History: **En. 10-1230 by Sec. 30, Ch. 329, L. 1974; amd. Sec. 10, Ch. 100, L. 1977; R.C.M. 1947, 10-1230; amd. Sec. 3, Ch. 469, L. 1981; amd. Sec. 63, Ch. 609, L. 1987; amd. Sec. 3, Ch. 510, L. 1991; amd. Sec. 6, Ch. 655, L. 1991.**

Cross-References

Fingerprints and photographs, 41-5-304.

Records and reports of traffic convictions, Title 61, ch. 11.

41-5-603. Youth court and department records. (1) Youth court and youth court-related department records, including social, medical, and psychological records, reports of preliminary inquiries, predispositional studies, and supervision records of probationers, are open to inspection prior to the sealing of the records only to the following:

(a) the youth court and its professional staff;

(b) representatives of any agency providing supervision and having legal custody of a youth;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;

(d) any court and its probation and other professional staff or the attorney for a convicted party who had been a party to proceedings in the youth court when considering the sentence to be imposed upon such party;

(e) the county attorney;

(f) the youth who is the subject of the report or record, after he has been emancipated or reaches the age of majority;

(g) a member of a county interdisciplinary child information team formed under 52-2-211 who is not listed in subsection (1); and

(h) members of a local interagency staffing group provided for in 52-2-203.

(2) All or any part of records information secured from records listed in subsection (1) of this section, when presented to and used by the court in a proceeding under this chapter, shall also be made available to the counsel for the parties to the proceedings.

(3) Petitions, motions, and other pleadings filed in a case, including findings, verdicts, orders, and decrees, shall be open to public inspection only when related to an offense for which access must be allowed under 41-5-601.

(4) All information obtained in discharge of an official duty by any officer or other employee of the youth court or the department shall be privileged and shall not be disclosed to anyone other than the judge and others entitled under this chapter to receive such information, unless otherwise ordered by the judge.

(5) After youth court and department records, reports of preliminary inquiries, predispositional studies, and supervision records of probationers are sealed, they are not open to inspection except, upon order of the youth court, for good cause to:

(a) those persons and agencies listed in subsection (1); and

(b) adult probation professional staff preparing a presentence report on a youth who has reached the age of majority.

History: **En. 10-1231 by Sec. 31, Ch. 329, L. 1974; R.C.M. 1947, 10-1231; amd. Sec. 1, Ch. 507, L. 1979; amd. Sec. 13, Ch. 515, L. 1987; amd. Sec. 64, Ch. 609, L. 1987; amd. Sec. 4, Ch. 510, L. 1991; amd. Sec. 7, Ch. 655, L. 1991.**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Copies of proceedings, 3-5-604.

Confidential communications made to public officer, 26-1-810.

Presentence investigation, 46-18-111.

Supervision of probationers and parolees, Title 46, ch. 23, part 10.

41-5-604. Disposition of records. (1) All youth court records and law enforcement records except fingerprints and photographs pertaining to a youth coming under this chapter shall be physically sealed when the youth reaches the age of 18 years.

(2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the above records and files shall be physically sealed upon termination of the extended jurisdiction.

(3) Upon the physical sealing of the records pertaining to a youth pursuant to this section, any agency or department that has in its possession copies of the records so sealed shall also seal or destroy such copies of records. Anyone violating the provisions of this subsection shall be subject to contempt of court.

(4) Nothing herein contained shall prohibit the destruction of such records with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

(5) The requirements for sealed records in this section shall not apply to youth traffic records or to records directly related to an offense to which access must be allowed under 41-5-601.

History: En. 10-1232 by Sec. 32, Ch. 329, L. 1974; amd. Sec. 1, Ch. 59, L. 1975; R.C.M. 1947, 10-1232; amd. Sec. 2, Ch. 507, L. 1979; amd. Sec. 4, Ch. 469, L. 1981; amd. Sec. 14, Ch. 515, L. 1987.

Cross-References

Contempts, Title 3, ch. 1, part 5.

Minors and adults defined, 41-1-101.

Continuing jurisdiction of Youth Court, 41-3-1114.

Records and reports of traffic convictions, Title 61, ch. 11.

Part 7

Probation Officers

Part Cross-References

Probation, parole, and clemency, Title 46, ch. 23.

Cases of juveniles excluded, 46-23-102.

41-5-701. Appointment of probation officers. The youth court judge of each judicial district shall appoint such necessary probation officers as are required to carry out the purpose and intent of this chapter. He shall appoint such part-time probation officers as shall be required. The qualifications for part-time probation officers must approximate those required for probation officers insofar as possible. A chief probation officer must be appointed by the judge to supervise the youth division offices in the judicial district. The judge shall also insure that the youth division offices are staffed with necessary office personnel and that the offices are properly equipped to effectively carry out the purpose and intent of this chapter. No person while serving as a law enforcement officer may be appointed or perform the duties of a full-time or part-time probation officer.

History: En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(1); amd. Sec. 3, Ch. 29, L. 1979.

Cross-References

Youth Court committee, 41-5-105.

Youth Court Judge, 41-5-201.

Powers of Department of Corrections and Human Services, 46-23-1002.

41-5-702. Qualifications of probation officers. (1) Any person appointed as a chief probation officer must have the following qualifications:

(a) a master's degree in the behavioral sciences;

(b) a bachelor's degree from an accredited college or university in the behavioral sciences and at least 1 year's experience in work of a nature related to the duties of a probation officer as set forth in 41-5-703; or

(c) a bachelor's degree in any field and at least 3 years' experience in work related to the duties of a probation officer as set forth in 41-5-703.

(2) The judge may appoint any reputable person as a probation officer who has had experience in work of a nature related to the duties of a chief probation officer, provided preference shall be given to persons with the qualifications set forth in subsection (1).

(3) Each person appointed as a chief probation officer or probation officer under this section or as a deputy probation officer under 41-5-705 must, through a source approved by his employer, obtain 16 hours a year of training in subjects relating to the powers and duties of probation officers.

History: En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(2); amd. Sec. 1, Ch. 544, L. 1987.

Cross-References

Qualifications of probation and parole officers, 46-23-1003.

41-5-703. Powers and duties of probation officers. (1) A probation officer shall:

(a) perform the duties set out in 41-5-401;

(b) make predisposition studies and submit reports and recommendations to the court;

(c) supervise, assist, and counsel youth placed on probation or under his supervision;

(d) perform any other functions designated by the court.

(2) A probation officer shall have no power to make arrests or to perform any other law enforcement functions in carrying out his duties except that a probation officer may take into custody any youth who violates either his probation or a lawful order of the court.

History: En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(4), (5).

Cross-References

Preliminary investigation and disposition, 41-5-301.

Dispositional hearing, 41-5-522.

Consent decree with petition, 41-5-524.

Supervision on probation, 46-23-1011.

Arrest when violations of parole alleged, 46-23-1012.

41-5-704. Salary and expenses. (1) A chief probation officer shall receive for his services a salary specified by the court, depending on the formal training and experience of each respective officer, but such salary may be no lower than $17,000 a year and no higher than $22,000 a year. In addition to such salary, the court shall, on or before July 1 of each year, adjust and fix the salary of the chief probation officer for a cost-of-living increase by adding to his annual salary on July 1 of that year an increment of 70% of the last previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana may in the future recognize as the successor to that index. The cost-of-living increment for the fiscal year beginning July 1 of each subsequent fiscal year shall be added to all cost-of-living increments granted for previous years. The salary of such officer shall be apportioned among and paid by each of the counties in which such officer is appointed to act, in proportion to the cost allocation established under 41-5-104, except where such officer is appointed for one county, such county shall pay the entire salary.

(2) In addition to the compensation provided in subsection (1), each chief probation officer with more than 5 years of service is entitled to receive an annual 1% longevity allowance. Each longevity allowance must be based on the officer's current salary and begins on the officer's annual employment anniversary date. The allowance must be paid in equal monthly installments.

(3) For all authorized travel incident to his official duties in connection with the investigation, supervision, and transportation of youth, the chief probation officer shall, in addition to his office salary, be reimbursed as provided in 2-18-501 through 2-18-503.

History: **En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(part); amd. Sec. 1, Ch. 605, L. 1979; amd. Sec. 1, Ch. 534, L. 1981; amd. Sec. 1, Ch. 332, L. 1983; amd. Sec. 2, Ch. 580, L. 1985.**

Cross-References

District Court budget, 7-6-2351.

Youth Court Judge, 41-5-201.

41-5-705. Deputy probation officers — salary. (1) The judge having jurisdiction of juvenile matters may also appoint such additional persons, giving preference to persons having the qualifications suggested for appointment as the chief probation officer, to serve as deputy probation officers as the judge deems necessary, their salaries to be fixed by the judge. Such salaries shall not exceed 90% or be less than 60% of the salary of the chief probation officer excluding longevity payments provided in 41-5-704.

(2) In addition to such salary, each deputy probation officer with more than 5 years of service is entitled to receive an annual 1% longevity allowance. Each longevity allowance must be based on the officer's current salary and begins on the officer's annual employment anniversary date. The allowance must be paid in equal monthly installments.

(3) If a deputy probation officer is promoted to chief probation officer, his salary may not be decreased by the appointment. He shall retain all longevity allowances earned during his service as a deputy.

History: **En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(part); amd. Sec. 2, Ch. 605, L. 1979; amd. Sec. 2, Ch. 332, L. 1983.**

Cross-References

District Court budget, 7-6-2351.

Youth Court Judge, 41-5-201.

Part 8

Custodial Care

41-5-801. Renumbered 41-3-1121. Sec. 31, Ch. 465, L. 1983.

41-5-802. Shelter care facilities. (1) Counties, cities, or nonprofit corporations may provide by purchase, lease, or otherwise, a shelter care facility.

(2) A shelter care facility must be physically unrestricting and may be used to provide shelter care for youth alleged or adjudicated delinquent, in need of supervision, or in need of care.

(3) A shelter care facility must be separate and apart from any facility housing adults accused or convicted of criminal offenses.

(4) State appropriations and federal funds may be received by the counties, cities, or nonprofit corporations for establishment, maintenance, or operation of a shelter care facility.

(5) A shelter care facility must be furnished in a comfortable manner and be as nearly as possible like a family home.

(6) A shelter care facility may be operated in conjunction with a youth detention facility.

History: **En. Sec. 26, Ch. 227, L. 1943; Sec. 10-627, R.C.M. 1947; amd. and redes. 10-1237 by Sec. 37, Ch. 329, L. 1974; amd. Sec. 13, Ch. 571, L. 1977; R.C.M. 1947, 10-1237; amd. Sec. 11, Ch. 475, L. 1987; amd. Sec. 8, Ch. 434, L. 1989; amd. Sec. 23, Ch. 799, L. 1991.**

Cross-References

District Court budget, 7-6-2351.

County levy for District Court expenses, 7-6-2511.

Youth Court Judge, 41-5-201.

Detention and shelter care of youth, 41-5-305.

Place of shelter care or detention, 41-5-306.

41-5-803. Repealed. Sec. 32, Ch. 465, L. 1983.

History: **En. Sec. 14, Ch. 227, L. 1943; amd. Sec. 7, Ch. 276, L. 1947; Sec. 10-615, R.C.M. 1947; amd. and redes. 10-1238 by Sec. 38, Ch. 329, L. 1974; amd. Sec. 8, Ch. 450, L. 1977; R.C.M. 1947, 10-1238; amd. Sec. 10, Ch. 567, L. 1979.**

41-5-804. Renumbered 41-3-1105. Sec. 31, Ch. 465, L. 1983.

41-5-805. Combined with 41-3-405, renumbered 41-3-1123. Sec. 31, Ch. 465, L. 1983.

41-5-806. Combined with 41-3-407, renumbered 41-3-1124. Sec. 31, Ch. 465, L. 1983.

41-5-807. Renumbered 41-3-1115. Sec. 31, Ch. 465, L. 1983.

41-5-808. Repealed. Sec. 27, Ch. 799, L. 1991.

History: **En. Sec. 4, Ch. 475, L. 1987; amd. Sec. 58, Ch. 83, L. 1989; amd. Sec. 9, Ch. 434, L. 1989.**

41-5-809. Rules. The department shall adopt rules governing licensing procedures for regional and county detention facilities.

History: **En. Sec. 5, Ch. 475, L. 1987; amd. Sec. 15, Ch. 475, L. 1987; amd. Sec. 10, Ch. 434, L. 1989; amd. Sec. 24, Ch. 799, L. 1991.**

41-5-810. County responsibility to provide youth detention services. (1) Each county shall provide services for the detention of youth in facilities separate from adult jails.

(2) In order to fulfill its responsibility under subsection (1), a county may:

(a) establish, operate, and maintain a holdover, a short-term detention center, or a youth detention facility at county expense;

(b) provide shelter care facilities as authorized in 41-5-802;

(c) contract with another county for the use of an available shelter care facility, holdover, short-term detention center, or youth detention facility;

(d) establish and operate a network of holdovers in cooperation with other counties;

(e) establish a regional detention facility; or

(f) enter into an agreement with a private party under which the private party will own, operate, or lease a shelter care facility or youth detention facility for use by the county. The agreement may be made in substantially the same manner as provided for in 7-32-2232 and 7-32-2233.

(3) Each county or regional detention facility must be licensed by the department in accordance with rules adopted under 41-5-809.

History: **En. Sec. 2, Ch. 799, L. 1991.**

41-5-811. Regional detention facilities. (1) Two or more counties may, by contract, establish and maintain a regional detention facility.

(2) For the purpose of establishing and maintaining a regional detention facility, a county may:

(a) issue general obligation bonds for the acquisition, purchase, construction, renovation, and maintenance of a regional detention facility;

(b) levy and appropriate taxes, as permitted by law, to pay its share of the cost of equipping, operating, and maintaining the facility; and

(c) exercise all powers, under the limitations prescribed by law, necessary and convenient to carry out the purposes of 41-5-810 and this section.

(3) Contracts authorized under subsection (1) must be made pursuant to the Interlocal Cooperation Act, Title 7, chapter 11, part 1.

(4) Contracts between counties participating in a regional detention facility must be for a term of not less than 10 years. In addition, the contracts must:

(a) specify the responsibilities of each county participating in the agreement;

(b) designate responsibility for operation of the regional detention facility;

(c) specify the amount of funding to be contributed by each county toward payment of the cost of establishing, operating, and maintaining the regional detention facility, including the necessary expenditures for the transportation of youth to and from the facility;

(d) include the applicable per diem charge for the detention of youths in the facility, as well as the basis for any adjustment in the charge; and

(e) specify the number of beds to be reserved for the use of each county participating in the regional detention facility.

History: **En. Sec. 3, Ch. 799, L. 1991.**

41-5-812. Creation of regions — requirements — limitation on number of regions. (1) Counties that wish to establish a regional detention facility shall form a youth detention region.

(2) Each youth detention region must:

(a) be composed of contiguous counties participating in the regional detention facility; and

(b) include geographical areas of the state that contain a substantial percentage of the total youth population in need of detention services, as determined by the board of crime control.

(3) There may be no more than five youth detention regions established in the state at any one time.

History: **En. Sec. 4, Ch. 799, L. 1991.**

41-5-813. Contracts with nonparticipating counties. Counties participating in a regional detention facility may enter into agreements with nonparticipating counties to provide services for the detention of youth. The costs of services must be based upon a per diem charge for the detention of youth in the facility.

History: **En. Sec. 5, Ch. 799, L. 1991.**

41-5-814. Responsibility for payment of detention costs. Absent a contract or agreement between counties, all costs for the detention of a youth in a county or regional detention facility, including medical costs incurred by the youth during detention, must be paid by the county at whose instance the youth is detained.

History: **En. Sec. 6, Ch. 799, L. 1991.**

Part 9

District Youth Guidance Homes (Repealed. Sec. 32, Ch. 465, L. 1983)

Part Compiler's Comments

Histories of Repealed Sections:

41-5-901. En. Sec. 1, Ch. 427, L. 1971; Sec. 10-1101, R.C.M. 1947; amd. and redes. 10-1242 by Sec. 42, Ch. 329, L. 1974; amd. Sec. 12, Ch. 100, L. 1977; amd. Sec 14, Ch. 571, L. 1977; R.C.M. 1947, 10-1242.

41-5-902. En. Sec. 10, Ch. 427, L. 1971; Sec. 10-1110, R.C.M. 1947; redes. 10-1251 by Sec. 51, Ch. 329, L. 1974; amd. Sec. 16, Ch. 100, L. 1977; R.C.M. 1947, 10-1251.

41-5-903. En. Sec. 3, Ch. 427, L. 1971; Sec. 10-1103, R.C.M. 1947; redes. 10-1244 by Sec. 44, Ch. 329, L. 1974; R.C.M. 1947, 10-1244.

41-5-904 through 41-5-910 reserved.

41-5-911. En. Sec. 8, Ch. 427, L. 1971; Sec. 10-1108, R.C.M. 1947; amd. and redes. 10-1249 by Sec. 49, Ch. 329, L. 1974; amd. Sec. 15, Ch. 100, L. 1977; amd. Sec. 9, Ch. 450, L. 1977; R.C.M. 1947, 10-1249.

41-5-912. En. Sec. 4, Ch. 427, L. 1971; Sec. 10-1104, R.C.M. 1947; amd. and redes. 10-1245 by Sec. 45, Ch. 329, L. 1974; R.C.M. 1947, 10-1245.

41-5-913. En. Sec. 11, Ch. 427, L. 1971; Sec. 10-1111, R.C.M. 1947; redes. 10-1252 by Sec. 52, Ch. 329, L. 1974; amd. Sec. 17, Ch. 100, L. 1977; R.C.M. 1947, 10-1252.

41-5-914 through 41-5-920 reserved.

41-5-921. En. Sec. 6, Ch. 427, L. 1971; Sec. 10-1106, R.C.M. 1947; amd. and redes. 10-1247 by Sec. 47, Ch. 329, L. 1974; R.C.M. 1947, 10-1247; amd. Sec. 1, Ch. 141, L. 1981.

41-5-922. En. Sec. 9, Ch. 427, L. 1971; Sec. 10-1109, R.C.M. 1947; amd. and redes. 10-1250 by Sec. 50, Ch. 329, L. 1974; R.C.M. 1947, 10-1250.

41-5-923. En. Sec. 5, Ch. 427, L. 1971; Sec. 10-1105, R.C.M. 1947; amd. and redes. 10-1246 by Sec. 46, Ch. 329, L. 1974; amd. Sec. 13, Ch. 100, L. 1977; R.C.M. 1947, 10-1246.

41-5-924. En. Sec. 7, Ch. 427, L. 1971; Sec. 10-1107, R.C.M. 1947; amd. and redes. 10-1248 by Sec. 48, Ch. 329, L. 1974; amd. Sec. 14, Ch. 100, L. 1977; R.C.M. 1947, 10-1248.

Part 10

State Grants For Youth Detention Services

41-5-1001. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Attendant care" means the direct supervision of youth by a trained attendant in a physically unrestricting setting.

(2) "Board" means the board of crime control provided for in 2-15-2006.

(3) "County" means a county, city-county consolidated government, or a youth detention region created pursuant to 41-5-812.

(4) "Home detention" means the use of a youth's home for the purpose of ensuring the continued custody of the youth pending adjudication or final disposition of his case.

(5) "Plan" means a county plan for providing youth detention services as required in 41-5-1003.

(6) "Secure detention" means the detention of youth in a physically restricting facility designed to prevent a youth from departing at will.

(7) "Youth detention service" means service for the detention of youth in facilities separate from adult jails. The term includes the services described in 41-5-1002.

History: En. Sec. 7, Ch. 799, L. 1991.

41-5-1002. State grants to counties. (1) Within the limits of available funds, the board shall provide grants in accordance with 41-5-1003 through 41-5-1005 to assist counties in establishing and operating youth detention services, including but not limited to youth detention facilities, short-term detention centers, holdovers, attendant care, home detention, and programs for the transportation of youth to regional detention facilities.

(2) Grants available under subsection (1) consist of state appropriations and federal funds received by the board for the purpose of administering 41-5-1001 through 41-5-1005.

History: En. Sec. 8, Ch. 799, L. 1991.

41-5-1003. Application for grants — county plans — obligation of counties receiving grants — review and monitoring. (1) In order to receive funds under 41-5-1002, a county shall submit an application to the board in a manner and form prescribed by the board.

(2) The application must include a written plan for providing youth detention services in the county. Each plan must include:

(a) an assessment of the need for services;

(b) a description of services to be provided, including alternatives to secure detention;

(c) the estimated number of youth who will receive services;

(d) criteria for the placement of youth in secure detention; and

(e) a budget describing proposed expenditures for youth detention services.

(3) If the application and plan are approved by the board, the county may receive a grant in the amount provided for in 41-5-1004.

(4) As a condition of receiving funds under 41-5-1002, each county shall, within a reasonable period of time, comply or substantially comply with state law and policies contained in the Montana Youth Court Act concerning the detention and placement of youth.

(5) The board shall periodically review and monitor counties receiving grants under 41-5-1002 to assure compliance or substantial compliance with the Montana Youth Court Act, as required under subsection (4). If, after notice and fair hearing, the board determines that a county is not in compliance or substantial compliance with the Montana Youth Court Act, the board shall terminate the grant to the county.

History: En. Sec. 9, Ch. 799, L. 1991.

41-5-1004. Distribution of grants — limitation of funding — restrictions on use. (1) The board shall award grants on an equitable basis, giving preference to services that will be used on a regional basis.

(2) The board shall award grants to eligible counties:

(a) in a block grant in an amount not to exceed 50% of the approved, estimated cost of secure detention; or

(b) on a matching basis in an amount not to exceed:

(i) 75% of the approved cost of providing holdovers, attendant care, and other alternatives to secure detention, except for shelter care. Shelter care must be paid as provided by law.

(ii) 50% of the approved cost of programs for the transportation of youth to appropriate detention or shelter care facilities, including regional detention facilities.

(3) Grants under 41-5-1002 may not be used to pay for the cost of youth evaluations. The cost of evaluations must be paid as provided for in 41-5-523.

History: En. Sec. 10, Ch. 799, L. 1991.

41-5-1005. Allocation of grants. (1) Each fiscal year, the board shall allocate grants under 41-5-1002 for distribution to eligible counties based upon:

(a) the relative population of youth residing in geographical areas of the state, as determined by the board; and

(b) the estimated cost of youth detention services in each county eligible for funding under 41-5-1002.

(2) A county is not automatically entitled to receive a grant from funds available under 41-5-1002.

History: En. Sec. 11, Ch. 799, L. 1991.

41-5-1006. Amendment of state plan. The board shall amend the state plan required under section 223 of the federal Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. 5633), to reflect the contents of approved county plans for providing youth detention services.

History: En. Sec. 12, Ch. 799, L. 1991.

41-5-1007. Compliance with federal requirements. The board shall administer federal funds available under section 222 of the federal Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. 5632), in compliance with the requirements of 42 U.S.C. 5633(a)(21) and 42 U.S.C. 5674.

History: En. Sec. 13, Ch. 799, L. 1991.

41-5-1008. Rulemaking authority. The board may adopt rules necessary to implement the provisions of 41-5-103(13), 41-5-812, and 41-5-1001 through 41-5-1008.

History: En. Sec. 14, Ch. 799, L. 1991.

CHAPTER 6

INTERSTATE COMPACT ON JUVENILES

Part 1 — Text of Compact

41-6-101. Enactment — provisions.
41-6-102. Juvenile compact administrator.
41-6-103. Supplementary agreements.
41-6-104. Financial arrangements.
41-6-105. Responsibilities of courts, state departments, agencies, and officers.
41-6-106. Additional procedures not precluded.

Part 1
Text of Compact

41-6-101. Enactment — provisions. The Interstate Compact on Juveniles as contained herein is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

The contracting states solemnly agree that:

Article I. Findings and Purposes

(1) Juveniles who are not under proper supervision and control or who have absconded, escaped, or run away are likely to endanger their own health, morals, and welfare and the health, morals, and welfare of others. The cooperation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to:

(a) cooperative supervision of delinquent juveniles on probation or parole;

(b) the return, from one state to another, of delinquent juveniles who have escaped or absconded;

(c) the return, from one state to another, of nondelinquent juveniles who have run away from home; and

(d) additional measures for the protection of juveniles and of the public which any two or more of the party states may find desirable to undertake cooperatively.

(2) In carrying out the provisions of this compact the party states shall be guided by the noncriminal, reformative, and protective policies which guide their laws concerning delinquent, neglected, or dependent juveniles generally. It shall be the policy of the states party to this compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

Article II. Existing Rights and Remedies

All remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies, and procedures and shall not be in derogation of parental rights and responsibilities.

Article III. Definitions

For the purposes of this compact, “delinquent juvenile” means any juvenile who has been adjudged delinquent and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court; “probation or parole” means any kind of conditional release of juveniles authorized under the laws of the states party hereto; “court” means any court having jurisdiction over delinquent, neglected, or dependent children; “state” means any state, territory, or possessions of the United States, the District of Columbia, and the commonwealth of Puerto Rico; and "residence" or any variant thereof means a place at which a home or regular place of abode is maintained.

Article IV. Return of Runaways

(1) The parent, guardian, person, or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person, or agency may petition the appropriate court in the demanding state for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of his running away, his location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, he shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person, or agency entitled to his legal custody, and that it is in the best interest and for the protection of such juvenile that he be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected, or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person, or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court. Upon receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court

in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such juvenile over to the officer whom the court demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

(2) Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person, or agency entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding 90 days as will enable his return to another state party to this compact pursuant to a requisition for his return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense of juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(3) The state to which a juvenile is returned under this article shall be responsible for payment of the transportation costs of such return.

(4) "Juvenile" as used in this article means any person who is a minor under the law of the state of residence of the parent, guardian, person, or agency entitled to the legal custody of such minor.

Article V. Return of Escapees and Absconders

(1) The appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody or supervision, and the location of such delinquent juvenile if known at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent

juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be submitted with such requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

(2) Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, such person may be taken into custody in any other state party to this compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time not exceeding 90 days as will enable his detention under a detention order issued on a requisition pursuant to this article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(3) The state to which a delinquent juvenile is returned under this article shall be responsible for payment of the transportation cost of such return.

Article VI. Voluntary Return Procedure

Any delinquent juvenile who has absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact and any juvenile who has run away from any state party to this compact, who is taken into custody without a requisition in another state party to this compact under the provisions of Article IV(1) and (2) or of Article V(1) and (2), may consent to his immediate return to the state from which he absconded, escaped, or ran away. Such consent shall be given by the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, consent to his return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of his rights under this compact. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is located, and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver him to the duly accredited officer or officers of the state demanding his return and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy of such court order; in such event a copy of the consent shall be forwarded to the compact administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

Article VII. Cooperative Supervision of Probationers and Parolees

(1) The duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state") may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this compact (herein called "receiving state") while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian, or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies, and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian, or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted, the sending state may transfer supervision accordingly.

(2) Each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

(3) After consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for any act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this compact, without interference.

(4) The sending state shall be responsible under this article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

Article VIII. Responsibility for Costs

(1) The provisions of Articles IV(3), V(3), and VII(4) of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party state or between a party state and its subdivisions as to the payment of cost or responsibilities therefor.

(2) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency, or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to Articles IV(3), V(3), or VII(4) of this compact.

Article IX. Detention Practices

To every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail, or lockup or be detained or transported in association with criminal, vicious, or dissolute persons.

Article X. Supplementary Agreements

The duly constituted administrative authorities of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment, and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment, and rehabilitation. Such care, treatment, and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall:

(1) provide the rates to be paid for the care, treatment, and custody of such delinquent juveniles, taking into consideration the character of facilities, services, and subsistence furnished;

(2) provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment, and custody;

(3) provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile;

(4) provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state;

(5) provide for reasonable inspection of such institutions by the sending state;

(6) provide that the consent of the parent, guardian, person, or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to his being sent to another state; and

(7) make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating states.

Article XI. Acceptance of Federal and Other Aid

Any state party to this compact may accept any and all donations, gifts, and grants of money, equipment, and services from the federal or any local government or any agency thereof and from any person, firm, or corporation for any of the purposes and functions of this compact and may receive and utilize the same subject to the terms, conditions, and regulations governing such donations, gifts, and grants.

Article XII. Compact Administrators

The governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules to carry out more effectively the terms and provisions of this compact.

Article XIII. Execution of Compact

This compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

Article XIV. Renunciation

This compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same authority which executed it, by sending 6 months' notice in writing of its intention to withdraw from the compact to the other states party hereto. The duties and obligations of a renouncing state under Article VII hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under Article X hereof shall be subject to renunciation as provided by such supplementary agreements and shall not be subject to the 6 months' renunciation notice of the present article.

Article XV. Severability

The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

Article XVI. Rendition

(1) This amendment shall provide additional remedies and shall be binding only as among and between those party states which specifically execute the same.

(2) All provisions and procedures of Articles V and VI of this compact shall be construed to apply to any juvenile charged with being a delinquent by reason of a violation of any criminal law. Any juvenile charged with being a delinquent by reason of violating any criminal law shall be returned to the requesting state upon a requisition to the state where the juvenile may be found. A petition in such case shall be filed in a court of competent jurisdiction in the requesting state where the violation of criminal law is alleged to have been committed. The petition may be filed regardless of whether the juvenile has left the state before or after the filing of the petition. The requisition described in Article V of this compact shall be forwarded by the judge of the court in which the petition has been filed.

History: En. Sec. 1, Ch. 76, L. 1967; R.C.M. 1947, 10-1001; amd. Sec. 1, Ch. 436, L. 1989.

Cross-References

Right to counsel, 41-5-511.

Appointment of guardian ad litem, 41-5-512.

Disposition of delinquent youth and youth in need of supervision, 41-5-523.

Probation revocation — disposition, 41-5-533.

Circumstances in which a peace officer may make an arrest, 46-6-210.

Uniform Criminal Extradition Act, Title 46, ch. 30.

Department to supervise importation and exportation of children, 52-2-114.

Commitment expenses — arrangement for transportation, 52-5-109.

Apprehension and return of child leaving juvenile facility without permission, 52-5-113.

Hearing on alleged violation of aftercare agreement — right to appeal outcome, 52-5-129.

41-6-102. Juvenile compact administrator. Pursuant to said compact, the governor is hereby authorized and empowered to designate an officer who shall be the compact administrator and who, acting jointly with like officers of other party states, shall promulgate rules to carry out more effectively the terms of the compact. Said compact administrator shall serve subject to the pleasure of the governor. The compact administrator is hereby authorized, empowered, and directed to cooperate with all departments, agencies, and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this state thereunder.

History: **En. Sec. 2, Ch. 76, L. 1967; R.C.M. 1947, 10-1002.**

Cross-References

Appointing power, Art. VI, sec. 8, Mont. Const.

Powers and duties of Governor, 2-15-201.

41-6-103. Supplementary agreements. The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to the compact. In the event that such supplementary agreement shall require or contemplate the use of any institution or facility of this state or require or contemplate the provision of any service by this state, said supplementary agreement shall have no force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service.

History: **En. Sec. 3, Ch. 76, L. 1967; R.C.M. 1947, 10-1003.**

Cross-References

Powers and duties of Department of Corrections and Human Services, 53-1-203.

41-6-104. Financial arrangements. The compact administrator, subject to the approval of the department of administration, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this state by the compact or by any supplementary agreement entered into thereunder.

History: **En. Sec. 4, Ch. 76, L. 1967; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 10-1004.**

Cross-References

Authorization for disbursements — submission of claim to Department of Administration, 17-8-201.

41-6-105. Responsibilities of courts, state departments, agencies, and officers. The courts, departments, agencies, and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions.

History: **En. Sec. 5, Ch. 76, L. 1967; R.C.M. 1947, 10-1005.**

41-6-106. Additional procedures not precluded. In addition to any procedure provided in Articles IV and VI of the compact for the return of any runaway juvenile, the particular states, the juvenile or his parents, the courts or other legal custodian involved may agree upon and adopt any other plan or procedure legally authorized under the laws of this state and the other respective party states for the return of any such runaway juvenile.

History: **En. Sec. 6, Ch. 76, L. 1967; R.C.M. 1947, 10-1006.**

Cross-References

Uniform Criminal Extradition Act, Title 46, ch. 30.

CHAPTER 7

MONTANA FAMILY POLICY ACT

Part 1 — Family Policy Act

41-7-101. Short title.
41-7-102. Policy and guiding principles.

Part 1

Family Policy Act

41-7-101. Short title. Section 41-7-102 and this section may be cited as the "Montana Family Policy Act".

History: En. Sec. 1, Ch. 98, L. 1993.

41-7-102. Policy and guiding principles. (1) It is the policy of the state of Montana to support and preserve the family as the single most powerful influence for ensuring the healthy social development and mental and physical well-being of Montana's children.

(2) The following principles must guide the actions of state government, state agencies, and agents of the state that serve children and families:

(a) Family support and preservation must be guiding philosophies when the state, state agencies, or agents of the state plan or implement services for children or families. The state shall promote the establishment of a range of services to children and families, including the following components:

(i) supporting families toward healthy development by providing a community network that offers a range of family support services, activities, and programs designed to promote family well-being, with services that include prenatal care, parenting education, parent aides, and visiting nurses; early childhood screening and developmental services; child care; and family recreation;

(ii) assisting vulnerable families before crises emerge by providing specialized services to strengthen and preserve families experiencing problems before they become acute and by providing early intervention and family support services, such as respite care, health and mental health services, and home-based rehabilitation services linked to services in subsection (2)(a)(i);

(iii) protecting and caring for children in crisis by providing intensive services to protect children who have suffered or are at risk of suffering serious harm from child abuse and neglect, by providing care for children at risk of out-of-home placement for emotional disturbances or behavior problems, and by providing family support services to ensure that reasonable efforts are made to safely maintain children in their own homes or to provide temporary or permanent care for children who are removed from their families. These services include family-based services to avoid removal from the home whenever possible and to provide out-of-home care, reunification services, adoption services, and long-term substitute care.

(b) To maximize resources and establish a range of services driven by the needs of families rather than by a predetermined array of categorical services, the state, state agencies, and agents of the state shall work toward a system of comprehensive and coordinated services to children and families through joint agency planning, joint financing, joint service delivery, common intake and assessment, and other arrangements that promote more effective support for families.

(c) Needed services to children and families should be provided as close as possible to the home community. The state, state agencies, and agents of the state shall encourage community planning and collaboration. State agencies shall cooperate to support collaborative programs.

(d) The state encourages all sectors of society to participate in building the community capacity to meet the needs of children and families.

(3) The family policy objectives described in this section are intended to guide the state's efforts to provide services to children and families. This section may not be construed to require a service or a particular level of service or to grant a right of action to enforce this section or other law.

History: En. Sec. 2, Ch. 98, L. 1993.

TITLES 42 AND 43

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